2009-2010

HOUSE WAYS & MEANS/BROADBAND CONNECTIVITY

MINUTES

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY
2009-2010 SESSION



Rep. Bill Faison
Chairman



Rep. Lorene Coates
Vice Chair



Rep. Thom Tillis
Vice Chair



Rep. Kelly Alexander



Rep. Lucy Allen



Rep. Angela Bryant



Rep. Mitch Gillespie



Rep. Jim Gulley



Rep. Phil Haire



Rep. Dewey Hill



Rep. Mark Hilton



Rep. Sara Stevens



Rep. Joe Tolson



Rep. Winkie Wilkins

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY ATTENDANCE

(Name of Committee)

DATES	18 Feb. 09'	4 Mar. 09'	11 Mar. 09'	18 Mar. 09'	25 Mar. 09'	1 April 09'	8 April 09'	15 April 09'	22 April 09'	22 Apr. 09'(2)	28 April 09'	6 May 09'	6 May 09'(2)	7 May 09'	11 May 09'
Faison, Bill, Chairman	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Coates, Lorene, Vice Chair	√	√	X	√	√	√	X	√	√	√	√	√	√	√	√
Tillis, Thom, Vice Chair	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Alexander, Kelly	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Allen, Lucy	√	√	√	√	√	√	√	X	√	√	√	X	√	√	X
Bryant, Angela	√	√	X	X	√	√	√	X	√	√	√	X	√	√	√
Gillespie, Mitch	X	X	√	X	√	√	√	√	√	√	X	√	√	√	X
Gulley, Jim	√	√	√	√	√	X	√	√	X	√	√	√	√	√	√
Haire, Phil	√	√	X	√	√	√	√	√	√	X	X	√	√	√	X
Hill, Dewey	X	√	√	√	√	√	√	√	√	X	√	√	√	X	√
Hilton, Mark	X	√	√	√	√	√	√	√	√	√	√	√	√	√	X
Stevens, Sarah	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Tolson, Joe	√	√	X	√	X	√	√	√	√	X	X	√	√	X	√
Wilkins, Winkie	√	√	X	√	√	√	√	√	√	√	√	X	√	X	√
STAFF:															
Carter, Brenda	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Seitz, Susan	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Fennell, Heather	√	√													
Hovis, Tim										√	√	√	√	√	√
Capriglione, Peter	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY ATTENDANCE

(Name of Committee)

DATES	27 May 09'	03 June 09'	08 June 09'	17 June 09'	24 June 09'	01 July 09'	15 July 09'	22 July 09'	29 July 09'	05 Aug. 09'	05 Aug. 09'(2)	05 Aug. 09'(3)			
Faison, Bill, Chairman	√	√	√	√	√	√	√	√	√	√	√	X			
Coates, Lorene, Vice Chair	√	√	√	X	√	√	√	√	√	√	√	√			
Tillis, Thom, Vice Chair	√	√	√	√	√	X	√	X	√	√	√	√			
Alexander, Kelly	√	√	X	√	√	√	√	√	√	√	√	√			
Allen, Lucy	√	√	X	X	√	√	X	X	√	√	√	√			
Bryant, Angela	√	√	√	√	√	√	√	√	√	√	√	√			
Gillespie, Mitch	√	√	√	√	√	√	√	√	√	√	√	√			
Gulley, Jim	√	√	√	√	√	√	√	√	√	√	√	√			
Haire, Phil	X	√	√	√	√	√	√	√	√	√	√	√			
Hill, Dewey	√	√	√	√	X	√	√	√	√	√	√	√			
Hilton, Mark	√	√	√	√	√	√	√	√	√	√	√	√			
Stevens, Sarah	√	√	√	√	√	√	√	√	√	√	√	√			
Tolson, Joe	√	√	√	√	√	√	√	√	√	√	√	√			
Wilkins, Winkie	X	√	√	√	√	X	X	X	X	X	X	X			
STAFF:															
Carter, Brenda	√	√	√	√	√	√	√	√	√	√	X	X			
Seitz, Susan	√	√	√	√	√	√	√	√	√	√	√	√			
Fennell, Heather															
Hovis, Tim	√	√	√	√	√	√	√	√	√	√	X	X			
Capriglione, Peter	√	√	√	√	√	√	√	√	√	√	X	X			

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY
2009-2010 SESSION

MEMBER	OFFICE	PHONE	ASSISTANT
Faison, Bill, Chairman	611 LOB	919-715-3019	Lavada Vitalis, Committee Assistant
Coates, Lorene, Vice Chair	633 LOB	919-733-5784	Melissa Lennon
Tillis, Thom, Vice Chair	1002 LB	919-733-5828	Carol Wakely
Alexander, Kelly	632 LOB	919-733-5778	Marjorie Conner
Allen, Lucy	419B LOB	919-733-5860	Shara Graham
Blackwell, Hugh	606 LOB	919-733-5805	Joan Adams
Boles, James	501 LOB	919-733-5903	Rhonda Todd
Bryant, Angela	542 LOB	919-733-5878	Karon Hardy
Gillespie, Mitch	1008 LB	919-733-5862	Cindy Hobbs
Gulley, Jim	1313 LB	919-733-5800	Brian Lehrschall
Haire, Phil	639 LOB	919-715-3005	Sara Jane Lennard
Hill, Dewey	1309 LB	919-733-5830	Gennie Thurlow
Hilton, Mark	1021 LB	919-733-5988	Carol Wilson
Stevens, Sarah	509 LOB	919-715-1883	Barbara Stevens
Tolson, Joe	307B2 LOB	919-715-3024	Shirley Phillips
Wilkins, Winkie	1301 LB	919-715-0850	Nancy Brantley

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, February 18, 2009

The House Committee on Ways and Means//Broadband met on Wednesday, February 18, 2009, in Room 425 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Lucy Allen, Angela Bryant, Jim Gulley, Phil Haire, Sara Stevens, Joe Tolson, and Winkie Wilkins. Staff in attendance: Brenda Carter and Susan Sitz. House Sergeant-at-Arms assisting: Marvin Lee, Bob Rossi and John Brandon. House Pages: Sarah Blackburn from Cleveland County sponsored by Representative Moore and Emily Potter from Caldwell County sponsored by Representative Starnes. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. Chairman Faison introduced our speaker of the day, Charlie Pittman.

Charlie Pittman (Senior Program Director, Telecom & Technologies Convergence) was recognized to present to the committee. His presentation is attached. (*Attachment 3*) Below are some key points of his presentation:

- Broadband is the transmission facility capable of carrying bandwidth greater than 45mbps.
- High-speed is services that provide the subscriber with transmissions at a speed in excess of 200 kbps in at least one direction.
- Copper Vs. Fiber: Copper- multiple pairs can be combined with electronics to provide multi-megabits of bandwidth. As distance increases bandwidth decreases. Fiber- A single fiber can transport multiple 10 gigabits on one lambda (wavelength of light).
- Cable modem service is provided by the Cable Company and DSL/ADSL or fiber service is normally provided by phone companies.
- Cable companies pick up metropolitan areas around fibrillation. The requirement for build out is 15 to 20 homes per mile.
- Fiber has a lot of benefits over copper. Copper is affected by lightning, high maintenance, and high repair.
- Companies are beginning to deploy fiber to homes.

Chairman Faison opened the floor to questions from the members and visitors.

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:37 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, February 18, 2009
1:00PM
Room 425, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **Speaker Subject – Overview of Broadband Technology**
   Charlie Pitman - (Senior Program Director, E-NC)

4. **Adjourn**

VISITOR REGISTRATION SHEET

Ways & Means/Broadband Connectivity — 18 February 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Herb Crenshaw	AT&T North Carolina
Stan Pace	Verizon
Dana Simpson	Smith Anderson
Marty Bocock	Embarq
Thomas Moore	Edwards & Wells
Dwight Allen	Allen Law Offices
[illegible]	AT&T
Bill Wright	Alltel
Joyce Peters	NPAssoc.
Connie Wilson	NCTCA
[illegible]	Acha Public

VISITOR REGISTRATION SHEET

Ways & Means/Broadband Connectivity — 18 February 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Margaret Trotter	Broad Pierce
Jennifer Pratt	State Library of NC
Daniel Baum	K+L GATES
Andrew Meehan	NC Elec Co-ops
Tammy Robertson	TWC
[illegible]	TWC
Tom Coley	CWA
Curtis Shew JR	CWA
David Anders	PTPNC
Leanne Winner	NCSBA
June Patterson	e-NC Authority

VISITOR REGISTRATION SHEET

Ways & Means/Broadband Connectivity — 18 February 2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Fran Wescott	APT / OPEN / net
Leslie Arnold	SOG - Daily Bulletin
[signature]	MWC
Bob Wells	Alliance of N.C. Independent Telcos

Broadband Infrastructure

Ways and Means/Broadband Connectivity Meeting

Charles Pittman
The e-NC Authority
February 2009

www.e-NC.org

Broadband & High-Speed Internet

What is Broadband? (& What is Bandwidth?)

What are the Technologies that Deliver It?

Who are the Service Providers in N.C.?

www.e-NC.org

Definition of Broadband & High-Speed Internet

Who defines it?:
The Federal Communications Commission

Old definition: High-speed Internet

Service that provides the subscriber with transmissions at a speed in excess of 200 kilobits per second (kbps) in at least one direction.

www.e-NC.org

New Speed Tiers from the FCC

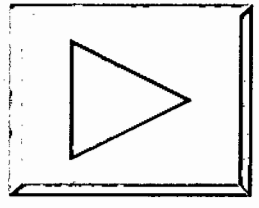
FCC ORDER

March 19, 2008, FCC Meeting

The FCC issued an order to require broadband service providers to report how many broadband subscribers they have in each Census Tract, broken down by speed and by type of technology. The order requires service providers to categorize both their upload and download speeds according to the defined Tiers of this order.

FCC ORDER ON BROADBAND	
Broadband Tiers	**Upload and Download speeds according to eight speed tiers**
First-generation Data	200 kilobits per second to 768 kbps
Basic Tier 1	768 kbps to 1.5 megabits per second
Tier 2	1.5 Mbps to 3 Mbps
Tier 3	3 Mbps to 6 Mbps
Tier 4	6 Mbps to 10 Mbps
Tier 5	10 Mbps to 25 Mbps
Tier 6	25 Mbps to 100 Mbps
Tier 7	greater than 100 Mbps.

Demo Speeds



www.e-NC.org

Applications for Broadband

500 kbps - 1 Mbps	Voice over IP Basic Email Web Browsing (simple sites) Streaming Music (caching) Low Quality Video (highly compressed)
1 Mbps - 5 Mbps	Web Browsing (complex sites) Email (larger size attachments) Remote Surveillance IPTV-SD (1-3 channels) File Sharing (small/medium) Telecommuting (ordinary) Digital broadcast video (1 channel) Streaming Music

Applications for Broadband

5 Mbps - 10 Mbps	Telecommuting (converged services) File Sharing (large) IPTV-SD (multiple channels) Video on Demand SD Broadcast SD Video Video Streaming (2-3 channels) HD Video Downloading Medical File Sharing (basic) Remote Diagnosis (basic) Remote Education Building Control & Management
10 Mbps - 100 Mbps	Telemedicine Educational Services Broadcast Video SD and some HD High Quality Telepresence HD Surveillance Smart/Intelligent Building Control

Applications for Broadband

100 Mbps - 1 Gbp	HD Telemedicine Multiple Educational Services Broadcast Video full HD Full IPTV Channel Support Video on Demand HD Gaming (immersion) Remote Server Services for Telecommuting
1 Gbps - 10 Gbps	Research Applications Telepresence using uncompressed high definition video streams Live event digital cinema streaming Telemedicine remote control of scientific/medical instruments Interactive remote visualization and virtual reality Movement of terabyte datasets Remote supercomputing

What are the Technologies that Deliver Last Mile Broadband or High-Speed Internet?

- **Cable Modem (transmission over coaxial cable, hybrid coax/fiber, fiber)**
- **DSL (transmission over copper)**
- **Fiber (transmission over fiber – can include fiber-to-the-home (FTTH), fiber-to-the-node (FTTN)**
- **PCS (mobile - cell)**
- **Satellite**
- **Wireless (unlicensed/licensed)**

What is Bandwidth?

Narrowband – a transmission facility capable of carrying up to and including T-1 (1.544 megabits per sec. symmetrical).

Wideband – Transmission facility capable of carrying bandwidth greater than T-1.

Broadband – Transmission facility capable of carrying bandwidth greater than 45 Mbps.

Copper versus Fiber

Copper – Multiple pairs can be combined with electronics to provide multi-megabits of bandwidth. As distance increases bandwidth decreases.

Fiber – A single fiber can transport l0 gigabits on one lambda (Wavelength of light).



Who are the Service Providers in N.C.?

- **ILECs (4)**
- **Independent Telephone Companies (6)**
- **Telephone Cooperatives (9)**
- **Cable Companies (28)**
- **Competitive Local Exchange Companies (?)**
- **Municipal Company (2)**
- **Satellite providers (3)**
- **Wireless licensed/unlicensed**

Build-out Challenges

- **Last mile service**
- **Business case / plus lack of competition**
- **Rural vs. urban disparities.**
  (More availability in urban areas, prices similar when available)
- **Industry Trends – triple play, quad play, video competition**

Broadband Deployment Today & Tomorrow

Broadband by Major Communications Providers:

- **AT&T – U-verse (ADSL2+)**
- **Cable Industry – DOCSIS 3.0**
- **Verizon – FiOS (FTTH)**

See: *Bigger Vision, Bolder Action, Brighter Future; Capturing the Promise of Broadband for North Carolina and America* at e-nc.org

www.e-NC.org

Broadband Deployment Today & Tomorrow

- Independents, cooperatives and public broadband providers are deploying high-capacity net generation networks, but there are not enough of them to have a major impact on the United States as a whole.
- Wireless cannot provide as much bandwidth capacity as fiber but, in some cases, may be a better choice than DSL or cable modem service.
- Broadband over power lines will not offer high-capacity broadband in the foreseeable future
- The satellite broadband available in the United States is not a solution.
- Various state initiatives are likely to increase broadband deployment and adoption, but most of these initiatives are focusing on low-capacity broadband that will not meet America's needs in years ahead.

e-NC

www.e-NC.org

FTTH Deployment

ATMC – deploying fiber to the home in the greenfields in Brunswick County.

Skyline TMC

Star TMC – greenfields in Sampson County.

Surry TMC is deploying FTTH in Surry County.

Wilkes TMC is deploying FTTH in Wilkes County.

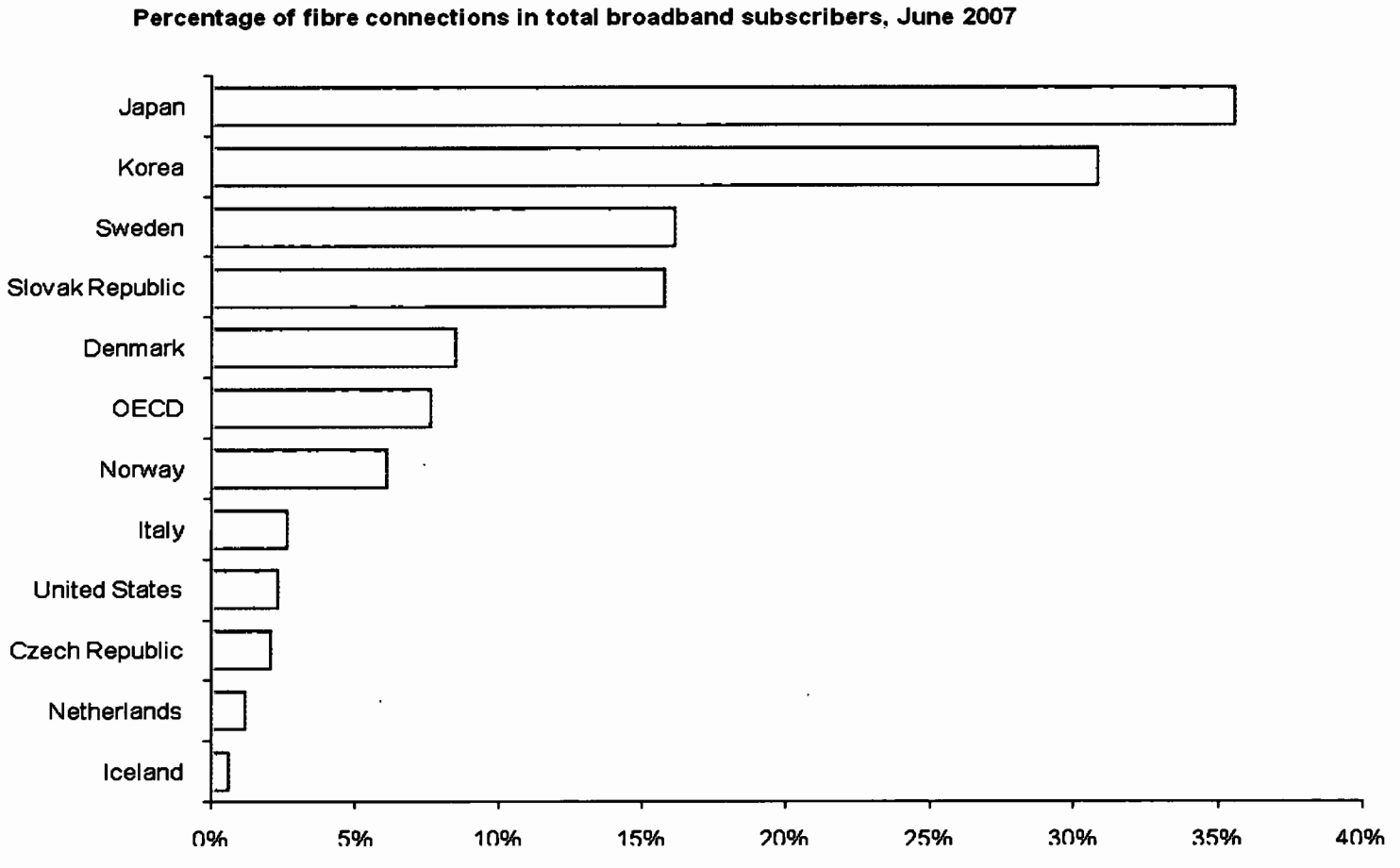
Yadkin Valley TMC – deploying FTTH.

City of Wilson – FTTH

Salisbury – Planning stage.

www.e-NC.org

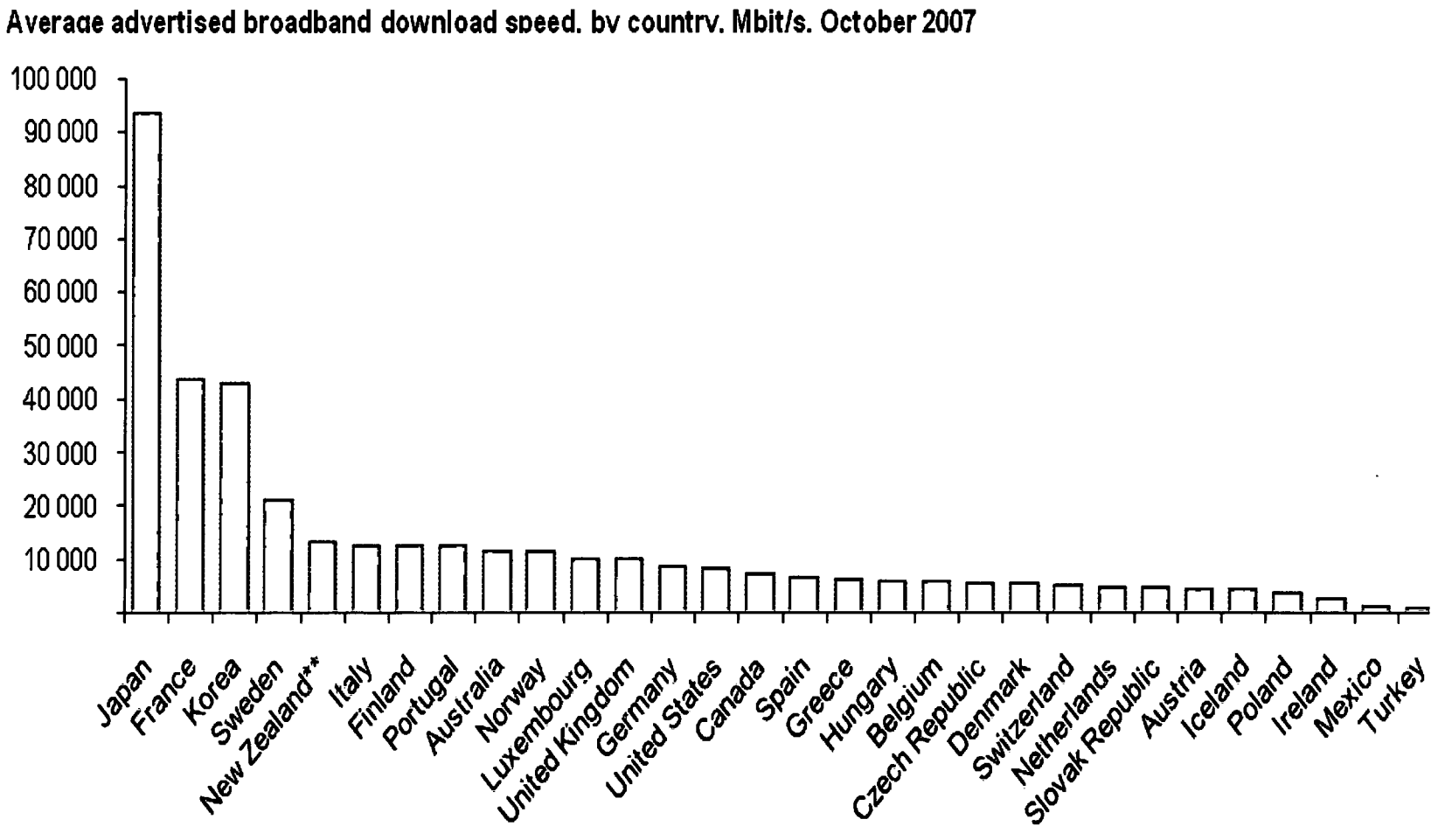
On fiber connections as a percent of total subscribers, the US ranked 9th among the OECD nations as of June 2007:



OECD, *Percentage of fibre connections in total broadband (June 2007)*, http://www.oecd.org/dataoecd/21/58/39574845.xls

www.e-NC.org

On average advertised download data speed, the United States ranked 14th among OECD nations as of October 2007:



OECD, *Broadband Average Advertised Download Speeds* (October 2007), http://www.oecd.org/dataoecd/10/53/39575086.xls.

www.e-NC.org

The Real Issue

- **Approximately 600,000 households in North Carolina do not have any high-speed Internet access available.**

- **Mapping the un-served areas is important, but not nearly as important as providing high-speed Internet access to the students, households and communities that don't have service. These people don't need a map. They know they don't have access.**

www.e-NC.org

Who Needs High-Speed Internet?



e-NC

www.e-NC.org

What Can We Do to Increase Availability?

- Help increase the understanding of citizens and leaders of what broadband is, and of deployment issues.

- Increased digital literacy in communities, and an increased understanding of the benefits of broadband – means a likely increase in demand (and hopefully supply)

- Review the reports on our Website, at e-nc.org: *Bigger Vision, Bolder Action, Brighter Future; Capturing the Promise of Broadband for North Carolina and America* and *Capturing The Promise – e-NC Internet Action Plan.*

To Reach Us ....

Connecting
North Carolina
to a Better Future

The e-NC Authority

4021 Carya Drive, Raleigh

1-866-627-8725

www.e-nc.org

www.e-NC.org

NATIONAL SCIENCE FOUNDATION

RESEARCH AND RELATED ACTIVITIES

For an additional amount for "Research and Related Activities", $1,000,000,000, to remain available until September 30, 2010.

MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION

For an additional amount for "Major Research Equipment and Facilities Construction", $150,000,000, to remain available until September 30, 2010.

EDUCATION AND HUMAN RESOURCES

For an additional amount for "Education and Human Resources", $50,000,000, to remain available until September 30, 2010.

OFFICE OF INSPECTOR GENERAL

For an additional amount for "Office of Inspector General", $2,000,000, to remain available until September 30, 2011.

GENERAL PROVISIONS—THIS TITLE

SEC. 201. The Assistant Secretary of Commerce for Communications and Information (Assistant Secretary), in consultation with the Federal Communications Commission (Commission) (and, with respect to rural areas, the Secretary of Agriculture), shall establish a national broadband service development and expansion program in conjunction

with the technology opportunities program, which shall be referred to the Broadband Technology Opportunities Program. The Assistant Secretary shall ensure that the program complements and enhances and does not conflict with other Federal broadband initiatives and programs.

(1) The purposes of the program are to—

(A) provide access to broadband service to citizens residing in unserved areas of the United States;

(B) provide improved access to broadband service to citizens residing in underserved areas of the United States;

(C) provide broadband education, awareness, training, access, equipment, and support to—

(i) schools, libraries, medical and healthcare providers, community colleges and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service by or through these organizations;

(ii) organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of

broadband service by low-income, unemployed, aged, and otherwise vulnerable populations; and

(iii) job-creating strategic facilities located within a State-designated economic zone, Economic Development District designated by the Department of Commerce, Renewal Community or Empowerment Zone designated by the Department of Housing and Urban Development, or Enterprise Community designated by the Department of Agriculture.

(D) improve access to, and use of, broadband service by public safety agencies; and

(E) stimulate the demand for broadband, economic growth, and job creation.

(2) The Assistant Secretary may consult with the chief executive officer of any State with respect to—

(A) the identification of areas described in subsection (1)(A) or (B) located in that State; and

(B) the allocation of grant funds within that State for projects in or affecting the State.

(3) The Assistant Secretary shall—

(A) establish and implement the grant program as expeditiously as practicable;

(B) ensure that all awards are made before the end of fiscal year 2010;

(C) seek such assurances as may be necessary or appropriate from grantees under the program that they will substantially complete projects supported by the program in accordance with project timelines, not to exceed 2 years following an award; and

(D) report on the status of the program to the Committees on Appropriations of the House and the Senate, the Committee on Energy and Commerce of the House, and the Committee on Commerce, Science, and Transportation of the Senate, every 90 days.

(4) To be eligible for a grant under the program an applicant shall—

(A) be a State or political subdivision thereof, a nonprofit foundation, corporation, institution or association, Indian tribe, Native Hawaiian organization, or other non-governmental entity in partnership with a State or political subdivision thereof, Indian tribe, or Native Hawaiian organization if the Assistant Secretary deter-

mines the partnership consistent with the purposes this section;

(B) submit an application, at such time, in such form, and containing such information as the Assistant Secretary may require;

(C) provide a detailed explanation of how any amount received under the program will be used to carry out the purposes of this section in an efficient and expeditious manner, including a demonstration that the project would not have been implemented during the grant period without Federal grant assistance;

(D) demonstrate, to the satisfaction of the Assistant Secretary, that it is capable of carrying out the project or function to which the application relates in a competent manner in compliance with all applicable Federal, State, and local laws;

(E) demonstrate, to the satisfaction of the Assistant Secretary, that it will appropriate (if the applicant is a State or local government agency) or otherwise unconditionally obligate, from non-Federal sources, funds required to meet the requirements of paragraph (5);

(F) disclose to the Assistant Secretary the source and amount of other Federal or State funding sources from which the applicant receives, or has applied for, funding for activities or projects to which the application relates; and

(G) provide such assurances and procedures as the Assistant Secretary may require to ensure that grant funds are used and accounted for in an appropriate manner.

(5) The Federal share of any project may not exceed 80 percent, except that the Assistant Secretary may increase the Federal share of a project above 80 percent if—

(A) the applicant petitions the Assistant Secretary for a waiver; and

(B) the Assistant Secretary determines that the petition demonstrates financial need.

(6) The Assistant Secretary may make competitive grants under the program to—

(A) acquire equipment, instrumentation, networking capability, hardware and software, digital network technology, and infrastructure for broadband services;

(B) construct and deploy broadband service related infrastructure;

(C) ensure access to broadband service by community anchor institutions;

(D) facilitate access to broadband service by low-income, unemployed, aged, and otherwise vulnerable populations in order to provide educational and employment opportunities to members of such populations;

(E) construct and deploy broadband facilities that improve public safety broadband communications services; and

(F) undertake such other projects and activities as the Assistant Secretary finds to be consistent with the purposes for which the program is established.

(7) The Assistant Secretary—

(A) shall require any entity receiving a grant pursuant to this section to report quarterly, in a format specified by the Assistant Secretary, on such entity's use of the assistance and progress fulfilling the objectives for which such funds were granted, and the Assistant Secretary shall make these reports available to the public;

(B) may establish additional reporting and information requirements for any recipient of

any assistance made available pursuant to this section;

(C) shall establish appropriate mechanisms to ensure appropriate use and compliance with all terms of any use of funds made available pursuant to this section;

(D) may, in addition to other authority under applicable law, deobligate awards to grantees that demonstrate an insufficient level of performance, or wasteful or fraudulent spending, as defined in advance by the Assistant Secretary, and award these funds competitively to new or existing applicants consistent with this section; and

(E) shall create and maintain a fully searchable database, accessible on the Internet at no cost to the public, that contains at least the name of each entity receiving funds made available pursuant to this section, the purpose for which such entity is receiving such funds, each quarterly report submitted by the entity pursuant to this section, and such other information sufficient to allow the public to understand and monitor grants awarded under the program.

(8) Concurrent with the issuance of the Request for Proposal for grant applications pursuant to this section, the Assistant Secretary shall, in coordination with the Federal Communications Commission, publish the non-discrimination and network interconnection obligations that shall be contractual conditions of grants awarded under this section.

(9) Within 1 year after the date of enactment of this Act, the Commission shall complete a rulemaking to develop a national broadband plan. In developing the plan, the Commission shall—

(A) consider the most effective and efficient national strategy for ensuring that all Americans have access to, and take advantage of, advanced broadband services;

(B) have access to data provided to other Government agencies under the Broadband Data Improvement Act (47 U.S.C. 1301 note);

(C) evaluate the status of deployments of broadband service, including the progress of projects supported by the grants made pursuant to this section; and

(D) develop recommendations for achieving the goal of nationally available broadband serv-

ice for the United States and for promoting broadband adoption nationwide.

(10) The Assistant Secretary shall develop and maintain a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States that entities and depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State: Provided, That not later than 2 years after the date of the enactment of the Act, the Assistant Secretary shall make the broadband inventory map developed and maintained pursuant to this section accessible to the public.

SEC. 202. The Assistant Secretary of Commerce for Communications and Information may reissue any coupon issued under section 3005(a) of the Digital Television Transition and Public Safety Act of 2005 that has expired before use, and shall cancel any unredeemed coupon reported as lost and may issue a replacement coupon for the lost coupon.

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, March 4, 2009

The House Committee on Ways and Means//Broadband met on Wednesday, March 4, 2009, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Lucy Allen, Angela Bryant, Jim Gulley, Phil Haire, Sarah Stevens, Joe Tolson, and Winkie Wilkins. Staff in attendance: Brenda Carter, Peter Capriglione, Heather Fennell and Susan Seitz. House Sergeant-at-Arms assisting: Marvin Lee, Bob Rossi and Trey Raley. House Page: Blake Ware from Harnett County sponsored by Rep. Lewis. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. Chairman Faison introduced our speaker of the day, Joe Freddoso from MCNC. Mr. Freddoso spoke about school connectivity and NCREN build out:

Joe Freddoso (President and CEO, MCNC) was recognized to present to the committee. Mr. Freddoso's hand out is attached. *(Attachment 3)* Below are some key points of his presentation:

- Many districts in the State are deploying one to one learning programs, in this program students are issued a personal laptop or other device that enables on-line learning.
- Broadband access availability continues to be limited in many rural communities across NC because: Last mile service providers cannot make a business case in sparsely populated areas, local government in these areas lack the tax base to provide a municipal broadband service and in some cases where providers have invested in infrastructure consumer demand is lacking.
- Mr. Freddoso's proposal is to use the impetus created by the increasing momentum for technology integrated learning in K-12 to promote broadband at home. Involving rural schools where one on one learning is being implemented, MCNC would provide financial support to offer broadband service from existing broadband providers in the region to students not yet signed up for home access.

Chairman Faison opened the floor to questions from members and visitors. Chairman explained that the committee had two bills, one requires a vote and the other is just up for

discussion. Chairman Faison is the primary sponsor for House Bill 96 so he turned the meeting over to Vice-Chairman Coates. The following bills were placed before the Committee:

House Bill 96-A BILL TO BE ENTITLED: an act clarifying the authority of counties to donate surplus, obsolete, or unused personal property to other governmental units or to nonprofit organizations. Rep. Faison moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Faison to explain the bill. After the explanation of the bill Chairman Coates opened the floor for questions and comments. Rep. Tillis was recognized to send forth and amendment. The amendment passed. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS, Amendment and Committee Report are attached. (*Attachment 4*)

House Bill 9-A BILL TO BE ENTITLED: an act to make it unlawful to use additional technology associated with a mobile phone while operating a vehicle on a public street or highway or public vehicular area. Rep. Haire moved that the proposed committee substitute be before the committee. Hearing no objection, the Chair called upon the bill sponsor Rep. Pierce to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. As explained earlier in the committee this bill was not up for a vote, but for discussion only. The Bill, Bill Analysis, and Proposed Committee Substitute are attached. (*Attachment 5*)

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:50 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, March 4, 2009
1:00PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **Speaker Subject – Update on School Connectivity & NCREN Build Out**
   -- Joe Freddoso, President & CEO of MCNC

4. **House Bills**

•	HB 09	No Texting While Driving	Representative Pierce
•	HB 96	Local Government Surplus Property Donations.	Representative Faison

5. **Adjourn**

VISITOR REGISTRATION SHEET

House Select Comm.on Way & Means/Broadband Conn. 04 March 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Ry	MWC
Harry Taylor	MWC
Brian Lewis	NC Assoc. of Educators
John Palenski	NCCCS
Thomas Moore	Edvision Webb
Ed Hardy	BP
Ron Kaylor	Kaylor Law Firm
Henry Jones	Atty Rep
Dan Sipe	Smith Anderson
CHARLES PITTMAN	e-NC AUTHORITY
DORENDA GATLING	WOW e-CDC (ROPER NC)

VISITOR REGISTRATION SHEET

House Select Comm.on Way & Means/Broadband Conn. 04 March 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bunny Sanders	P O Box 357 Roper NC 27970
Catharine Rice	Acken Audits. Cary, NC
David Stroller	State Farm
Steve Brewer	EMBARQ
Maray Tratten	Brooks Pierce
Sammy Roberson	TWC
Brad Phillips	TWC
Doug Mosley	Capstar
Bill Scoggins	DLP Gates LLP
Cady Thomas	NC Assn of REALTORS
Michael Hay	DOC

VISITOR REGISTRATION SHEET

House Select Comm.on Way & Means/Broadband Conn. 04 March 2009

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Wayne Yancey	Sen. Charlie Dannelly
Debra DeCamillis	IOG
Christy Agner	DOA
Charlotte Boyd	DMV
Debbie Jones	DMV
Chris Brooks	DOJ/DMV
Tom Coley	

MCNC

North Carolina Research & Education Network

NCREN

Update

North Carolina House of Representatives
Ways and Means/Broadband Connectivity

March 4, 2009

Agenda

- School Connectivity Update
- School Connectivity Home Pilot
- Items to ponder
  - Ownership vs. Lease of public serving networks
  - ITS/MCNC collaboration

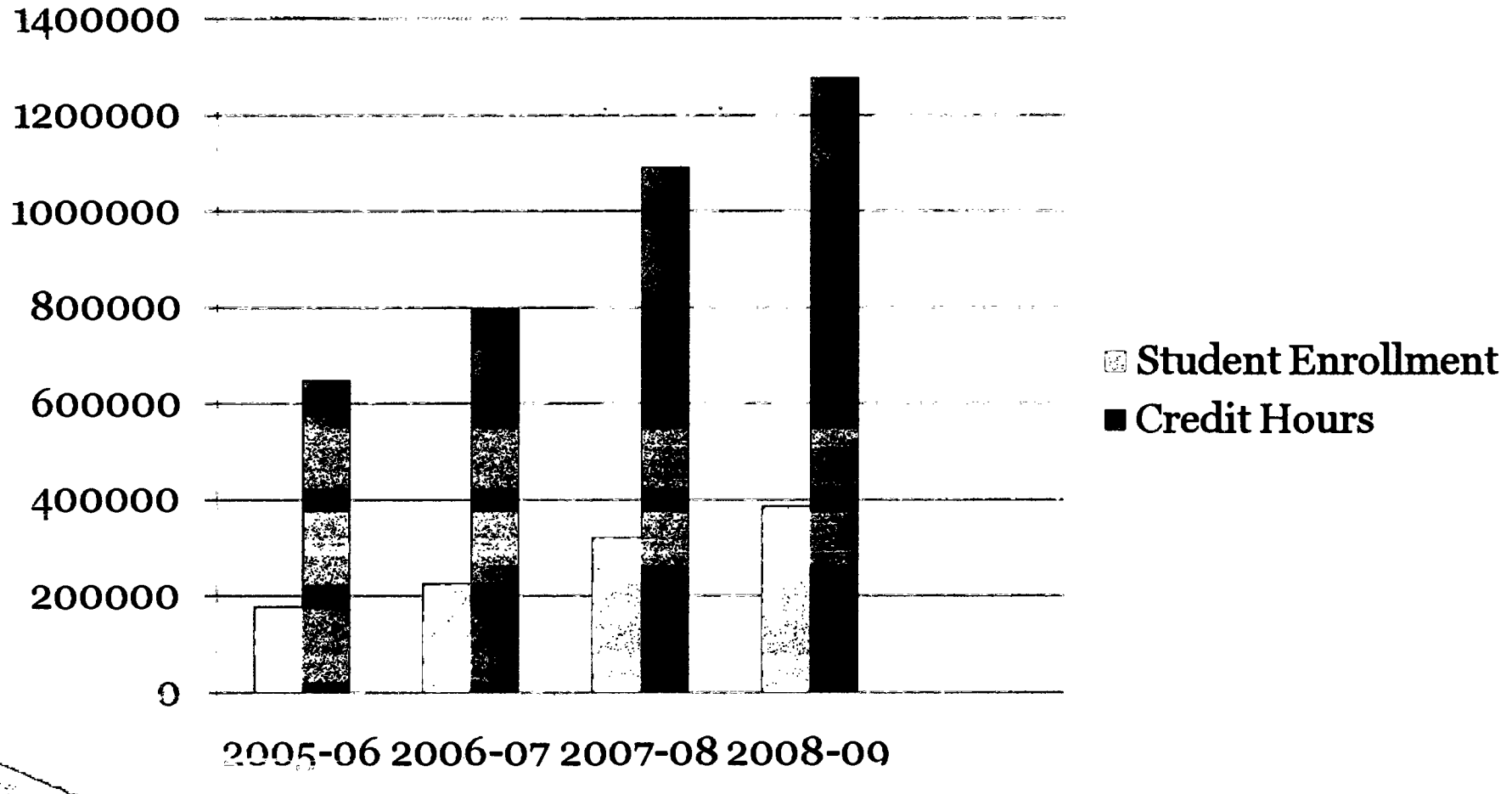


What is NCREN's Core Role?

- Backbone for Education and Research
  - Need is 20x in 6 years
  - Research in the wide area
- Fiscal Agent
  - Protect endowment
  - Protect customer

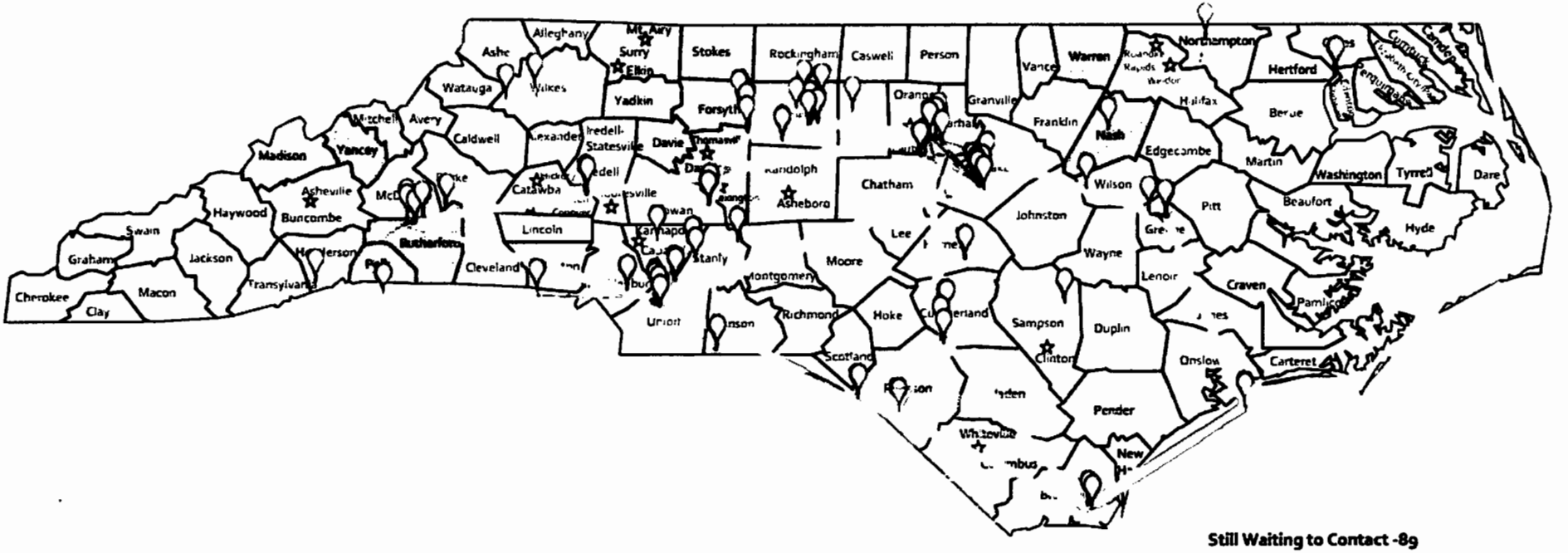


One Impact: eLearning Growth

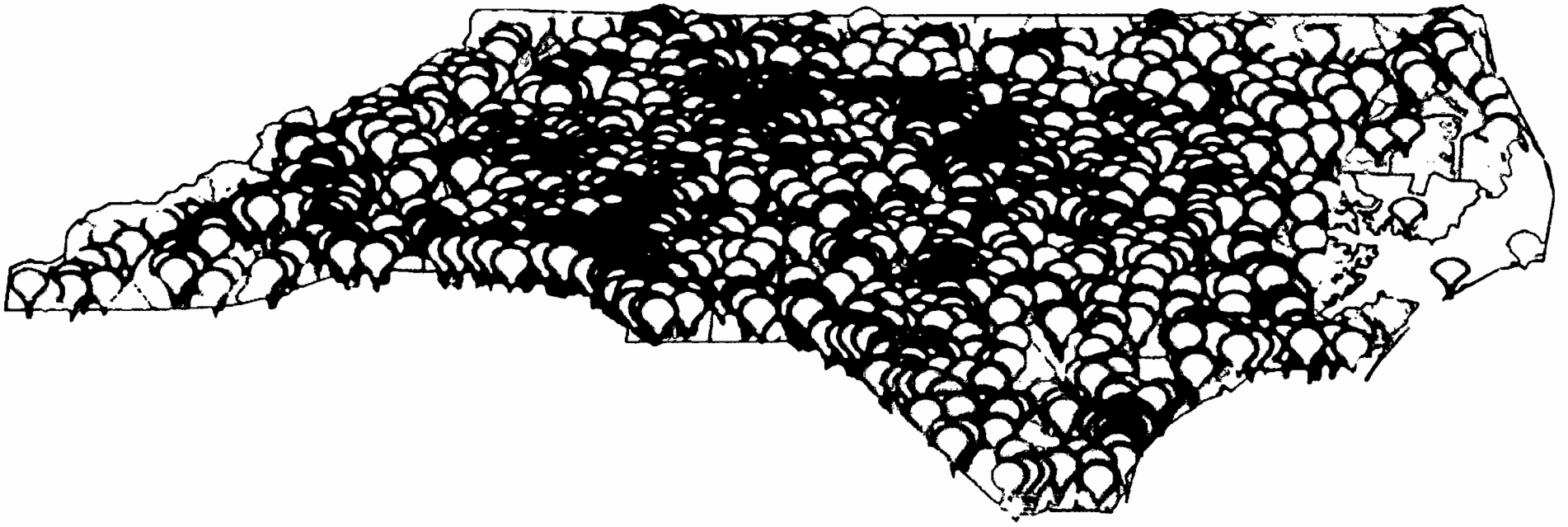


Student Enrollment/Credit Hours=UNC Online. NCCCS. NCVPS

Where We Were



Where We Are Now



Previously Connected to NCREN -2

Connected via Intermediary -5

[illegible] Integrated per terms of SOW -90

Backbone Connections Completed, LAN Integration required -9

Circuits Ordered, confirmed due dates -7

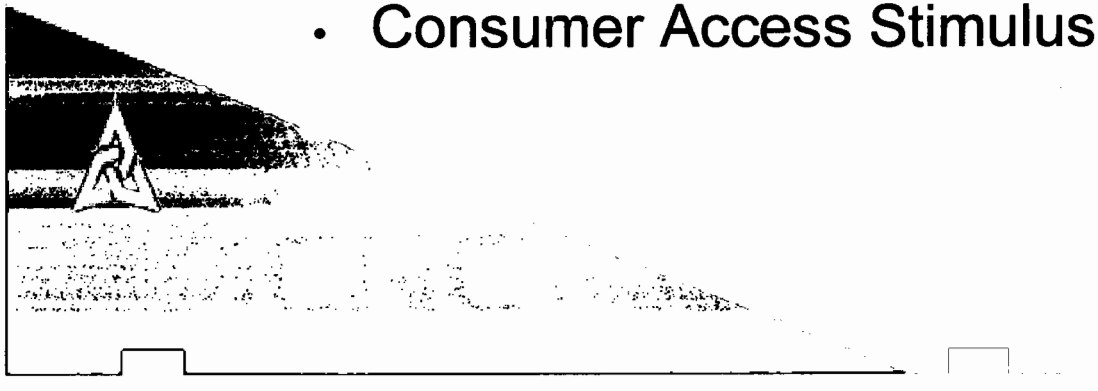
Circuits Ordered, awaiting due dates -1

[illegible] Occurring -1

City or Combined City/County LEAs ☆

MCNC's Broader Role

- Public Good
  - Neutrality
  - Non-Profit
  - Education
  - Innovation
  - Economic Development
  - Health
  - Homeland Security
  - Environment
  - Consumer Access Stimulus

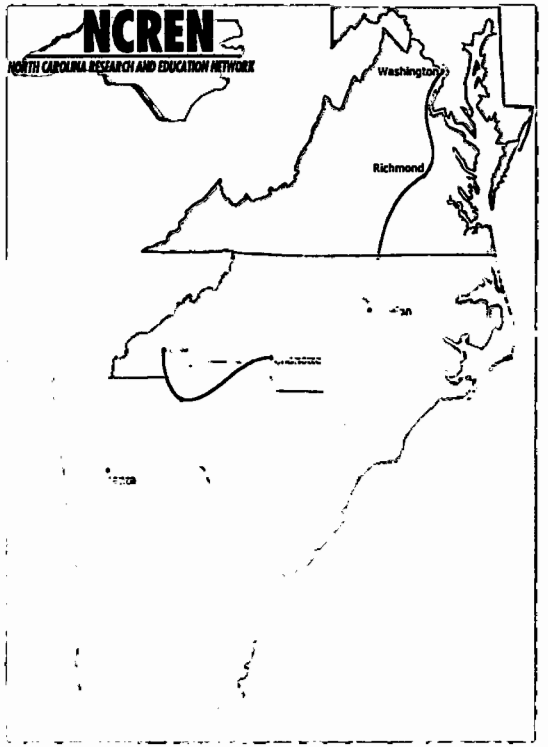


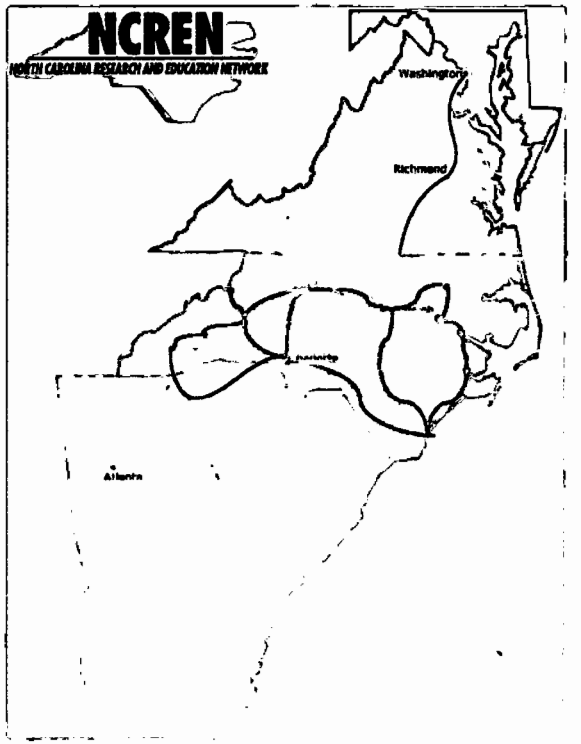
PILOT: School Connectivity Home

- Pilot will be one calendar year (Aug 09-July 10)
- NC House Ways and Means, Broadband Connectivity
- $50K from MCNC endowment
  - Subsidize broadband @ home
  - eNC, Friday Institute, ATT, Embarq, TWC
  - Early Colleges with one-to-one learning initiatives
    - Edgecombe, Macon, Warren, Wayne
    - Can support about 50 students and teachers per school
  - Contact the districts/schools to confirm interest

Value of Network Ownership

Urban areas owned, rural areas fee increases over time to education clients. Not realistic in today's environment



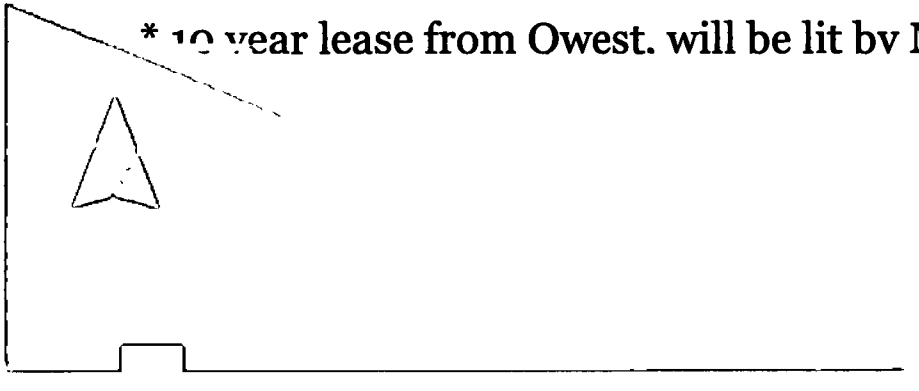


Existing Ownership Savings

Currently Lit Fiber Using Existing Demand

Routes	Impact	Net Present Value
Fiber to UNC-TV & MCNC Tower (Owned)	$497,430	$397,150
Raleigh to Charlotte (IRU)	$2,249,936	$686,248
Raleigh Metro Ring (Owned)	$26,572,789	$21,806,831
Rocky Mount to Charlotte (Lease)*	$1,268,486	$289,064
DukeNet Charlotte (Lease)	$1,215,000	$90,530
Total	$31,803,641	$23,269,823

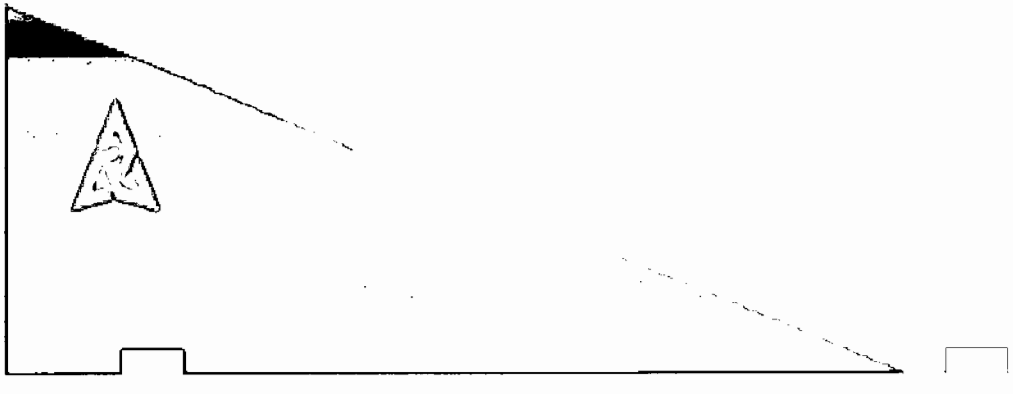
* 10 year lease from Owest. will be lit by March. 2009



Financial Considerations

15 Year NPV Cost model:

- NPV uses discount rate of 10%
- Inflation 4%
- Capacity lease (-1%) - deflation
- Modeled demand increase is well below trend
- Build assumes an equal partner



Financial Model Inputs

Capital Build	Mile
Cost-aerial	$35K
Cost-Underground Rural East	$46K
Cost – Underground Urban East	$90K
Cost – Underground Urban West	$108K
Cost-Underground Rural West	$65K

Capital Equip	
Amplifier Spacing	70 miles
Amplifier Spacing Contingency	5%
Communications shelter & non-recurring ROW	$225K
Optical equipment @ Amplifier	$210K
Optical equipment @ RPOP	$234K
Equipment Upgrade	5%
Equipment Useful Life	6

Operational	
Annual O&M	8%
Annual Franchise & ROW	$330/mile
Right of way per site	$2500
Shelter Maintenance Expense	10%
Equipment Maintenance	5%
Collocation per month	$1000

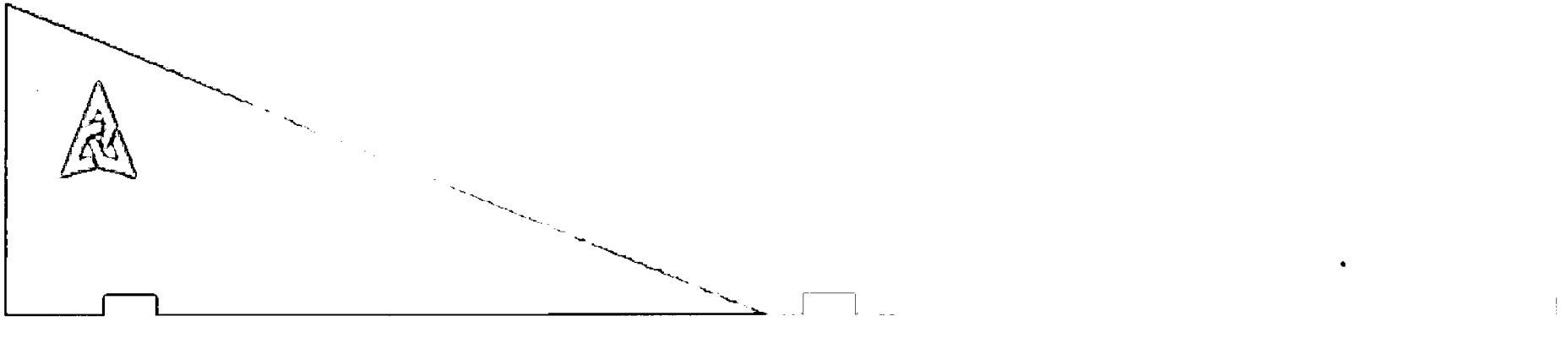
Financial	
Inflation	4.0%
Discount	10.0%

Fiber Route Miles	
Rocky Mount –Greenville	43.5
Greenville-MC-Wilmington	167
Winston Salem-Hickory-Ash	157
Asheville-Charlotte	118
Charlotte Metro	70
Charlotte-Wilmington	202
Lenior-Boone	28.3

15-Year Net Present Cost for Priority Routes

Summary View ($000)

	Today	Ownership IRU	Permanent
Industry Standard Modeled	$28,492	$22,668	$50,511
Subject Matter Experts	$85,360	$23,839	$40,898



Community Endorsements

"I am very supportive of this initiative. As you have pointed out, NCREN is critical to our having an infrastructure for the 21st century."
Dr. June Atkinson, State Superintendent, North Carolina Department of Public Instruction

"I think this is a very worthwhile project and just the kind of investment the Administration is looking for." **President Erskine Bowles, University of North Carolina General Administration**

"This is an important opportunity and I am fully supportive, especially if this would help us do some things statewide earlier than we would have otherwise had thought possible. I will be glad to help in every way."
President Hope Williams, North Carolina Independent Colleges and Universities

"Thanks for including us in this conversation and I have had the opportunity to review with our senior staff. We believe it is an excellent idea for investment and are fully supportive."
Dr. Scott Ralls, President North Carolina Community College System

ITS/MCNC

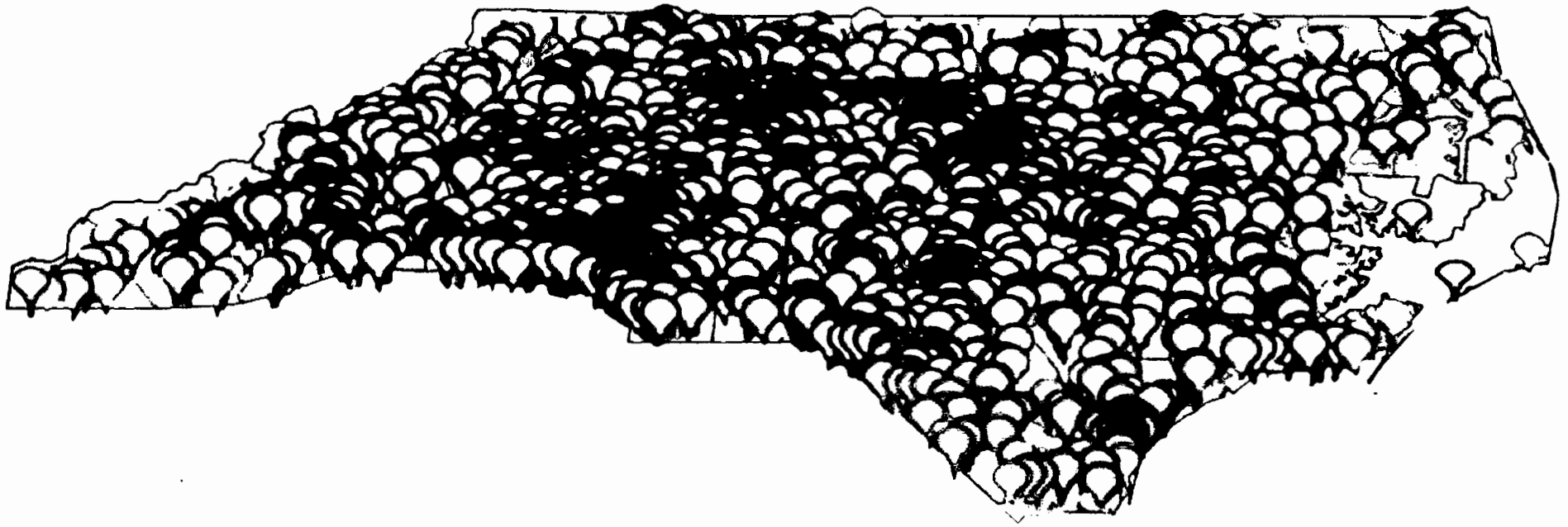
ITS	MCNC
Customer: State Administration	Customer: Research and Education
Customers have unique applications, tools and service needs.	Customers have robust and growing research needs and virtual education demand is skyrocketing.
Backbone: Owned urban, leased rural	Same
Exposure: Millions in extra lease costs	Same
Desire: Common backbone infrastructure	Same



ITS/MCNC

- Policy: ITS/MCNC work cooperatively on a common backbone
  - Higher education research, education, state administration and public health entities
- Policy: MCNC cannot pursue commercial business
  - Research/Content traffic between education and commercial
- Funding: Stimulus funds from across education, rural broadband and health care to build a common backbone--$20-$25M
  - Private Sector to get maximum benefit from this funding.

Thank you



Previousiy Connected to NCREN -2

Connected via Intermediary -5

[illegible] per terms of SOW -90

[illegible]one Connections Completed, LAN [illegible]tion required -9

[illegible]s Ordered. confirmed due dates -7

[illegible] Ordered. awaiting due dates -1

[illegible] Dialogue Occurring -1

[illegible] or Combined City/County LEAs ☆

HOUSE BILL 96

Short Title:	Local Government Surplus Property Donations.	(Public)
Sponsors:	Representatives Faison; Bell, Hughes, and Lucas.	
Referred to:	Rules, Calendar, and Operations of the House.	

February 10, 2009

A BILL TO BE ENTITLED

AN ACT CLARIFYING THE AUTHORITY OF COUNTIES TO DONATE SURPLUS, OBSOLETE, OR UNUSED PERSONAL PROPERTY TO OTHER GOVERNMENTAL UNITS OR TO NONPROFIT ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-280(a) reads as rewritten:

"(a) A city or a county may donate to a another governmental unit within the United States, a sister city, or a nonprofit organization incorporated by (i) the United States, (ii) the District of Columbia, or (iii) one of the United States, any personal property, including supplies, materials, and equipment, that the governing board deems to be surplus, obsolete, or unused. The governing board of the city or county shall post a public notice at least five days prior to the adoption of a resolution approving the donation. The resolution shall be adopted prior to making any donation of surplus, obsolete, or unused personal property. For purposes of this section a sister city is a city in a nation other than the United States that has entered into a formal, written agreement or memorandum of understanding with the donor city for the purposes of establishing a long term partnership to promote communication, understanding, and goodwill between peoples and to develop mutually beneficial activities, programs, and ideas. The agreement or memorandum of understanding establishing the sister city relationship shall be signed by the mayors or chief elective officer of both the donor and recipient cities."

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

HOUSE BILL 96:
Local Government Surplus Property Donations

2009-2010 General Assembly

Committee:	House Ways & Means / Broadband Connectivity, if favorable, Local Government II	**Date:**	March 4, 2009
Introduced by:	Rep. Faison	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition H96-CSTD-2		

SUMMARY: The proposed committee substitute to House Bill 96 makes a technical change to G.S. 160A-280 to clarify the authority of cities to dispose of property.

CURRENT LAW: S.L. 2007-430 permits cities and counties to donate surplus, obsolete, or unused personal property, including supplies, materials, and equipment, to another governmental unit within the United States, a sister city, or nonprofit organization. The act requires the governing board of the city or county to post a public notice at least five days before the adoption of a resolution approving the donation, and the resolution must be adopted prior to making the donation. A "governmental unit" is a city, county, school administrative unit, sanitary district, fire district, the State, or any other public district, authority, department, agency, board, commission, or institution. A "sister city" is a city in a nation other than the United States that has entered into a formal, written agreement or memorandum of understanding signed by both mayors or chief elective officer for the purposes of establishing a long-term partnership to promote communication, understanding, and goodwill and develop mutually beneficial activities, programs, and ideas. This act became effective August 23, 2007.

Chapter 160A of the General Statutes applies to cities and towns. Article 12 of Chapter 160A provides how cities and towns may dispose of property, including G.S. 160A-280, the grant of authority to dispose of property by donating surplus, obsolete, or unused personal property to other governmental units or nonprofit organizations. Chapter 153A of the General Statutes applies to counties. G.S. 153A-176 provides that counties may dispose of property using any of the methods in Article 12 of Chapter 160A:

§ 153A-176. Disposition of property.
A county may dispose of any real or personal property belonging to it according to the procedures prescribed in Chapter 160A, Article 12. For purposes of this section references in Chapter 160A, Article 12, to the "city," the "council," or a specific city official are deemed to refer, respectively, to the county, the board of commissioners, and the county official who most nearly performs the same duties performed by the specified city official. For purposes of this section, references in G.S. 160A-266(c) to "one or more city officials" are deemed to refer to one or more county officials designated by the board of county commissioners.

BILL ANALYSIS: The proposed committee substitute to house bill 96 makes a technical correction to G.S. 160A-280 to clarify the authority of cities to dispose of property by donating surplus, obsolete, or unused personal property to other governmental units or nonprofit organizations. Previously, subdivision (c) of G.S. 160A-280 referred to the authority of counties and other governmental units to dispose of property in this manner. This reference is unnecessary as the only authority granted by G.S. 160A-280 is granted to cities. The authority of counties to dispose of property in this manner is found in G.S. 153A-176.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 96
PROPOSED COMMITTEE SUBSTITUTE H96-PCS50172-TD-2

Short Title: Local Government Surplus Property Donations. (Public)

Sponsors:

Referred to:

February 10, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CITIES AND COUNTIES TO DONATE SURPLUS, OBSOLETE, OR UNUSED PERSONAL PROPERTY TO CHARTER SCHOOLS AND TO MAKE A TECHNICAL CHANGE TO THE AUTHORITY OF CITIES AND COUNTIES TO DONATE SURPLUS, OBSOLETE, OR UNUSED PERSONAL PROPERTY TO OTHER GOVERNMENTAL UNITS OR TO NONPROFIT ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-280(a) reads as rewritten:

"(a) A city or local board of education may donate to a another governmental unit within the United States, a sister city, or a nonprofit organization incorporated by (i) the United States, (ii) the District of Columbia, or (iii) one of the United States, any personal property, including supplies, materials, and equipment, that the governing board deems to be surplus, obsolete, or unused. The governing board of the city or county shall post a public notice at least five days prior to the adoption of a resolution approving the donation. The resolution shall be adopted prior to making any donation of surplus, obsolete, or unused personal property. For purposes of this section a sister city is a city in a nation other than the United States that has entered into a formal, written agreement or memorandum of understanding with the donor city for the purposes of establishing a long term partnership to promote communication, understanding, and goodwill between peoples and to develop mutually beneficial activities, programs, and ideas. The agreement or memorandum of understanding establishing the sister city relationship shall be signed by the mayors or chief elective officer of both the donor and recipient cities."

SECTION 2. G.S. 160A-280(b) reads as rewritten:

"(b) For the purposes of this section, the term "governmental unit" shall have the same meaning as defined by ~~G.S. 160A-274(a).~~G.S. 160A-274(a) and shall include North Carolina charter schools."

SECTION 3. G.S. 160A-280(c) reads as rewritten:

"(c) The authority granted to a ~~city, county, or governmental unit~~city under this section is in addition to any authority granted under any other provision of law."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
HOUSE Bill 96

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

H96-ATD-1 [v.2]

Comm. Sub. [YES]
Amends Title [YES]
H96-CSTD-2

Date _____,2009

Representative Tillis

moves to amend the bill on page 1, lines 2-10 by rewriting the lines to read:
"AN ACT TO AUTHORIZE CITIES AND COUNTIES TO DONATE SURPLUS, OBSOLETE, OR UNUSED PERSONAL PROPERTY TO CHARTER SCHOOLS AND TO MAKE A TECHNICAL CHANGE TO THE AUTHORITY OF CITIES AND COUNTIES TO DONATE SURPLUS, OBSOLETE, OR UNUSED PERSONAL PROPERTY TO OTHER GOVERNMENTAL UNITS OR TO NONPROFIT ORGANIZATIONS.
The General Assembly of North Carolina enacts:

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'(c) The authority granted to a ~~city, county, or governmental unit~~city under this section is in addition to any authority granted under any other provision of law.'

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

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 96 A BILL TO BE ENTITLED AN ACT CLARIFYING THE AUTHORITY OF COUNTIES TO DONATE SURPLUS, OBSOLETE, OR UNUSED PERSONAL PROPERTY TO OTHER GOVERNMENTAL UNITS OR TO NONPROFIT ORGANIZATIONS.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on LOCAL GOVERNMENT II.

(FOR JOURNAL USE ONLY)

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

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

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

HOUSE BILL 9

Short Title:	No Texting While Driving.	(Public)
Sponsors:	Representatives Pierce, Harrison, Hall (Primary Sponsors); K. Alexander, M. Alexander, Allred, Bell, Bryant, Carney, Cleveland, Dickson, Dollar, Earle, England, Farmer-Butterfield, Fisher, Goforth, Goodwin, Jackson, Jones, Justice, Luebke, McLawhorn, Spear, Starnes, Tarleton, Underhill, and Weiss.	
Referred to:	Rules, Calendar, and Operations of the House.	

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO USE ADDITIONAL TECHNOLOGY ASSOCIATED WITH A MOBILE PHONE WHILE OPERATING A VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-137.3(a)(1) reads as rewritten:

"(1) Additional technology. – Any technology that provides access to digital media ~~such as~~including, but not limited to, a camera, electronic mail, music, the Internet, text messaging, or games."

SECTION 2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-137.4A. Unlawful use of additional technology.**

(a) Offense. – It shall be unlawful for any person to use additional technology, as defined in G.S. 20-137.3(a)(1), associated with any mobile phone, while operating a vehicle on a public street or highway or public vehicular area.

(b) Exceptions. – The provisions of the section shall not apply to any of the following while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of a public or private ambulance.

(c) Penalty. – A violation of this section shall be an infraction and shall be punishable by a fine of one hundred dollars ($100.00) and the cost of court. No drivers license points or insurance surcharge shall be assessed as a result of a violation of this section. Failure to comply with the provisions of this section shall not constitute negligence per se or contributory negligence by the operator in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a vehicle."

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

HOUSE BILL 9:
No Texting While Driving

2009-2010 General Assembly

Committee:	House Ways & Means / Broadband Connectivity, if favorable, Judiciary III	**Date:**	March 4, 2009
Introduced by:	Reps. Pierce, Harrison, Hall	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H9-CSSA-1[v.3]		

SUMMARY: The Proposed Committee Substitute for House Bill 9 would prohibit the use of additional technologies available on a mobile phone, including text messaging, while operating a motor vehicle for all drivers except for law enforcement officers, firefighters, and ambulance drivers.

[As introduced, this bill was identical to S96, as introduced by Sen. Bingham, which is currently in Senate Judiciary II.]

CURRENT LAW: North Carolina law currently prohibits the use of a mobile telephone by a person under the age of 18 while operating a motor vehicle (G.S. 20-137.3), or by a person operating a school bus (G.S. 20-137.4), with certain limited exceptions. See chart under Background for additional details.

"Mobile telephone" is a device used by subscribers and other users of wireless telephone service to access the service, and includes hand held and hands-free devices. "Wireless telephone service" is a service that is a two-way real-time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 9 would prohibit the use of additional technologies available on a cell phone, including text messaging, while operating a motor vehicle for all drivers except for law enforcement officers, firefighters, and ambulance drivers.

Sections 1 and 2 of the bill remove the definition of "additional technology" currently used in the statute prohibiting the use of mobile telephones by individuals under 18 while operating a motor vehicle and also remove all references to additional technology in that statute. These changes leave the offense of using a mobile telephone by someone under 18 while operating a motor vehicle and do not change the penalty for that offense.

Section 3 of the bill removes all references to "additional technology" currently in the statute prohibiting the use of mobile telephones by persons operating a school bus. These changes leave the offense of using a mobile telephone by a person operating a school bus and do not change the penalty for that offense.

Section 4 of the bill defines "additional technology" as any technology that provides access to digital media including, but not limited to, a camera, electronic mail, music, the Internet, text messaging, or games. A new offense is created prohibiting any person from operating a vehicle on a public street or highway or public vehicular area while using additional technology associated with any mobile phone, while the vehicle is in motion.

Exceptions:

- Law Enforcement Officer while in the performance of official duties.
- Fire Department Members while in performance of official duties.
- Operators of public or private ambulances while in performance of official duties.

Penalties Generally:

- Infraction.
- $100.00 fine.
- No drivers license points or insurance surcharge.

Penalties for School Bus Drivers: (These are the same as current law)

- Class 2 misdemeanor
- $100.00 fine.
- No drivers license points or insurance surcharge.

EFFECTIVE DATE: This bill is effective December 1, 2009, and applies to offenses committee on or after that date.

BACKGROUND:

	Prohibition	Exceptions	Penalty
G.S. 20-137.3 ***[CURRENT LAW]***	Persons under the age of 18 may not use mobile phone or associated technology while operating a motor vehicle while the vehicle is in motion.	• In emergency situation to call emergency response operator; hospital, physician, or health clinic; ambulance; law enforcement • To call parent, legal guardian, or spouse	• Infraction • $25 fine • No drivers lice points, insurance surcharge, or court costs
G.S. 20-137.4 ***[CURRENT LAW]***	Person operating a school bus, activity bus, or any vehicle transporting school children for compensation, may not use mobile phone or associated technology while the vehicle is in motion.	• In an emergency situation, defined as circumstances such as medical concerns, unsafe road conditions, matters of public safety, or mechanical problems that create a risk of harm for operator and passengers	• Class 2 misdemeanor (1-30 days community punishment with no prior convictions) • Minimum $100 fine • No drivers license points or insurance surcharge

Wendy Graf-Ray and Heather Fennell substantially contributed to this summary.

H9-SMSA-3(CSSA-1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 9
PROPOSED COMMITTEE SUBSTITUTE H9-CSSA-1 [v.3]

3/4/2009 11:38:33 AM

Short Title: No Texting While Driving. (Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO USE ADDITIONAL TECHNOLOGY ASSOCIATED WITH A MOBILE PHONE WHILE OPERATING A VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-137.3(a) reads as rewritten:

"(a) Definitions. – The following definitions apply in this section:

~~(1) Additional technology. – Any technology that provides access to digital media such as a camera, electronic mail, music, the Internet, or games.~~

(2) Mobile telephone. – A device used by subscribers and other users of wireless telephone service to access the service. The term includes: (i) a device with which a user engages in a call using at least one hand, and (ii) a device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone.

(3) Wireless telephone service. – A service that is a two-way real-time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. § 20.3."

SECTION 2. G.S. 20-137.3(b) reads as rewritten:

"(b) Offense. – Except as otherwise provided in this section, no person under the age of 18 years shall operate a motor vehicle on a public street or highway or public vehicular area while using a mobile telephone ~~or any additional technology associated with a mobile telephone~~ while the vehicle is in motion. This prohibition shall not apply to the use of a mobile telephone ~~or additional technology~~ in a stationary vehicle."

SECTION 3. G.S. 20-137.4 reads as rewritten:

"**§ 20-137.4. Unlawful use of a mobile phone.**

(a) Definitions. – For purposes of this section, the following terms shall mean:

~~(1) Additional technology. – As defined in G.S. 20-137.3(a)(1).~~

(2) Emergency situation. – Circumstances such as medical concerns, unsafe road conditions, matters of public safety, or mechanical problems that create a risk of harm for the operator or passengers of a school bus.



(3) Mobile telephone. – As defined in G.S. 20-137.3(a)(2).
(4) School bus. – As defined in G.S. 20-4.01(27)d4. The term also includes any school activity bus as defined in G.S. 20-4.01(27)d3. and any vehicle transporting public, private, or parochial school students for compensation.

(b) Offense. – Except as otherwise provided in this section, no person shall operate a school bus on a public street or highway or public vehicular area while using a mobile telephone ~~or any additional technology associated with a mobile telephone~~ while the school bus is in motion. This prohibition shall not apply to the use of a mobile telephone ~~or additional technology associated with a mobile telephone~~ in a stationary school bus.

(c) Seizure. – The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile ~~telephone or additional technology,~~ telephone, unless otherwise provided by law.

(d) Exceptions. – The provisions of subsection (b) of this section shall not apply to the use of a mobile telephone ~~or additional technology associated with a mobile telephone~~ for the sole purpose of communicating in an emergency situation.

(e) Local Ordinances. – No local government may pass any ordinance regulating the use of mobile telephones ~~or additional technology associated with a mobile telephone~~ by operators of school buses.

(f) Penalty. – A violation of this section shall be a Class 2 misdemeanor and shall be punishable by a fine of not less than one hundred dollars ($100.00). No drivers license points or insurance surcharge shall be assessed as a result of a violation of this section. Failure to comply with the provisions of this section shall not constitute negligence per se or contributory negligence by the operator in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a school bus."

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-137.4A. Unlawful use of additional technology.**

(a) Additional technology. – Any technology that provides access to digital media including, but not limited to, a camera, electronic mail, music, the Internet, text messaging, or games.

(b) Offense. – It shall be unlawful for any person to operate a vehicle on a public street or highway or public vehicular area while using additional technology associated with any mobile phone, while the vehicle is in motion. This prohibition shall not apply to the use of additional technology in a stationary vehicle.

(b) Exceptions. – The provisions of this section shall not apply to any of the following while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of a public or private ambulance.

(c) Penalty. – A violation of this section shall be an infraction and shall be punishable by a fine of one hundred dollars ($100.00) and the cost of court. A violation of this section while operating a school bus, as defined in G.S. 20-137.4(a)(4), shall be a Class 2 misdemeanor and shall be punishable by a fine of not less than one hundred dollars ($100.00).

No drivers license points or insurance surcharge shall be assessed as a result of a violation of this section. Failure to comply with the provisions of this section shall not constitute negligence per se or contributory negligence by the operator in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a vehicle."

SECTION 5. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, March 11, 2009

The House Committee on Ways and Means//Broadband met on Wednesday, March 11, 2009, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Thom Tillis; Representatives Kelly Alexander, Lucy Allen, Mitch Gillespie, Jim Gulley, Dewey Hill, Mark Hilton and Sarah Stevens. Staff in attendance: Brenda Carter, Peter Capriglione, Heather Fennell and Susan Seitz. House Sergeant-at-Arms assisting: Marvin Lee, Bob Rossi and John Brandon. House Pages: Justin Hess from Forsyth County sponsored by Representative McGee and Megan Jarrett from Guilford County sponsored by Representative Harrison. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. Chairman Faison is the primary sponsor for House Bill 157 so he turned the meeting over to Representative Kelly Alexander. The following bills were placed before the Committee:

House Bill 157-A BILL TO BE ENTITLED: an act to create the Joint Legislative study committee on high-speed Internet in rural areas. Chairman Alexander called upon the bill sponsor Rep. Faison to explain the bill. After the explanation of the bill, Rep. Allen was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached.. *(Attachment 3)*

House Bill 309-A BILL TO BE ENTITLED: an act to remove the sunset on an act to protect customers purchasing tickets via the internet. The Chair called upon the bill sponsor Rep. Glazier to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. *(Attachment 4)*

House Bill 291-A BILL TO BE ENTITLED: an act amending the cosmetic art act to provide for licensure of persons engaging in the practice of natural hair braiding. The bill was pulled by request of the bill sponsor. The Bill is attached. *(Attachment 5)*

House Bill 9-A BILL TO BE ENTITLED: an act to make it unlawful to use additional technology associated with a mobile phone while operating a vehicle on a public street or highway or public vehicular area. Rep. Tillis moved that the proposed

committee substitute be before the committee. Hearing no objection, the Chair called upon the bill sponsor Rep. Pierce to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. The Chairman as well as the Committee felt that the bill needed to be place in a sub-committee. Chairman Faison appointed Tolson, Chair as well as Representatives Tillis and Alexander to serve on the committee. The Bill, Bill Analysis, and Amendments are attached. (*Attachment 6*)

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:23 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, March 11, 2009
1:00PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	HB 157	Continue Study/ Rural Internet Access	Representative Faison
2.	HB 309	Internet Ticket Protection Resale Sunset	Representative Glazier
3.	HB 291	Hair Braider Licensure/ Cosmetic Art Act	Representative Parmon
4.	HB 9	No Texting While Driving	Representative Pierce

4. **Adjourn**

VISITOR REGISTRATION SHEET

Ways + Means - Broadband 3-11-09
Name of Committee Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Amy McConkey	Smith Anderson
Wendy Kay	SZD Wicker
Henry Jones	Attorney Raleigh
Travis Moore	Fabrico Wade
John Rabiola	NCADA
Jimmy Broadway	TWC
BLAIR Phillips	TWC
Brittan Allen	Allen Law Offices, PLLC
Dwight Allen	"
Allison Culpepper	TRIAD Attorneys. D.A.
Dan Sipos	Smith Anderson
John Carrellus	NC Dept. of Commerce
Lemuel W. Hinton	NC Utilities Commission
CHRIS BROOKS	DOJ/DMV
Grant Pair	DCR
Charlotte Boyd	DMV
Debbie Jones	DMV
Johanna Reese	DOT
L. Andrews	NCFB
Marcy Tuttle	Brooks Pierce
Cady Thomas	NCAR Realtors
Alicia Davis	MWC
Karl Knapp	NCLM
Jerry Calloway + 4 students	Cabarrus Co. Home School Poli. Sci.
Barbara Bosacq	
LORI ANN HARRIS	LAHA
Steve Phillips	AAA

VISITOR REGISTRATION SHEET

Ways + Means - Broadband — 3/11/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Harry Taylor	MWC
Allison Clyo	NCWS
Michael Brinson MD	NC-ACP
Jim Blackburn	Association of County Commissioners

HOUSE BILL 157

Short Title:	Continue Study/Rural Internet Access.	(Public)
Sponsors:	Representatives Faison, Haire, Bryant, Gulley (Primary Sponsors); Adams, M. Alexander, E. Floyd, Frye, Hughes, Hurley, Jackson, Jones, Lucas, Pierce, Ross, Tarleton, and R. Warren.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Rules, Calendar, and Operations of the House.	

February 16, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE JOINT LEGISLATIVE STUDY COMMITTEE ON HIGH-SPEED INTERNET IN RURAL AREAS.

The General Assembly of North Carolina enacts:

SECTION 1. There is created the Joint Legislative Study Committee on High-speed Internet in Rural Areas. The Committee shall consist of 16 members, eight of whom shall be appointed by the Speaker of the House of Representatives and eight of whom shall be appointed by the President Pro Tempore of the Senate. The Speaker of the House of Representatives shall designate one Representative as Cochair and the President Pro Tempore of the Senate shall designate one Senator as Cochair. Vacancies of the Committee shall be filled by the same appointing authority that made the initial appointment. The Committee shall meet on the call of its House and Senate Cochairs. A quorum of the Committee shall be a majority of its members.

SECTION 2. The Committee shall examine the availability of high-speed Internet access in rural areas. In conducting its study, the Committee may:

(1) Consider whether rural areas have adequate access to high-speed Internet and offer proposals to assure access to high-speed Internet in rural areas.
(2) Examine the impact of high-speed Internet access on education, small businesses, and agriculture.
(3) Evaluate the economic impact of high-speed Internet access for individuals, counties, and the State of North Carolina.
(4) Identify technical issues associated with providing high-speed Internet access, including the availability of necessary equipment.
(5) Identify the potential costs to Internet providers.
(6) Examine rate considerations, including whether customers will pay the total costs or whether the costs will be spread through the rate-making process.
(7) Explore the impact of recent legislation allowing phone companies to provide cable service and high-speed Internet access.
(8) Study any other issue the Committee deems relevant.

SECTION 3. While in the discharge of its official duties, the Committee may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1, 138-5, or 138.6, as appropriate. With the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and

clerical staff to assist the Committee in its work. The House of Representatives' and Senate's Directors of Legislative Assistants shall assign clerical staff to the Committee. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Committee may meet in the Legislative Building or Legislative Office Building and may meet at various locations around the State in order to promote greater public participation in its deliberations.

SECTION 4. The Committee shall submit a final report to the 2011 Session of the General Assembly and may submit interim reports as it deems necessary. The Committee shall terminate upon filing its final report or upon the convening of the 2011 General Assembly, whichever comes first.

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

HOUSE BILL 157:
Continue Study/Rural Internet Access

2009-2010 General Assembly

Committee:	Ways and Means/Broadband Connectivity, if favorable, Rules, Calendar, and Operations of the House	**Date:**	February 24, 2009
Introduced by:	Reps. Faison, Haire, Bryant, Gulley	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 157 creates a Joint Legislative Study Committee on High Speed Internet in Rural Areas, consisting of 16 members. The Committee would report to the 2011 Session of the General Assembly.

BILL ANALYSIS: House Bill 157 creates a Joint Legislative Study Committee on High Speed Internet in Rural Areas, consisting of 16 members. Eight members would be appointed by the Speaker of the House of Representatives, and eight would be appointed by the President Pro Tempore of the Senate. Each appointing officer would designate a legislator to serve as Cochair of the Committee. The Committee's primary duty is to examine the availability of high-speed Internet access in rural areas. In carrying out its duties, the Committee would be authorized to identify technical issues, potential costs, the impact on education, small businesses and agriculture, and to study any other issues the Committee deems relevant. The Committee would meet on the call of its House and Senate Cochairs, and would be required to submit a final report to the 2011 Session of the General Assembly. The Committee would be authorized to offer proposals to assure access to high-speed Internet and to make such interim reports as it deems necessary.

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

BACKGROUND: This bill is a recommendation of the House Select Committee on High Speed Internet Access in Rural Areas. The Select Committee met several times during the 2008-2009 interim, and found that *"there is both a great need and a great desire for high speed broadband internet access in rural areas of the State."* In its final report to the 2009 General Assembly, the Select Committee recommended the appointment of an interim study committee to continue to focus on issues that impact the availability of high speed broadband internet access in rural areas of the State.

H157-SMRV-2(e1) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 157 A BILL TO BE ENTITLED AN ACT TO CREATE THE JOINT LEGISLATIVE STUDY COMMITTEE ON HIGH-SPEED INTERNET IN RURAL AREAS.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on RULES, CALENDAR, AND OPERATIONS OF THE HOUSE.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 309

Short Title:	Internet Ticket Protection Resale Sunset.	(Public)
Sponsors:	Representatives Glazier, Gibson, Tillis, Harrell (Primary Sponsors); K. Alexander, Allred, Faison, and Lucas.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary II.	

February 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET ON AN ACT TO PROTECT CUSTOMERS PURCHASING TICKETS VIA THE INTERNET.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2008-158 reads as rewritten:

"**SECTION 4.** This act becomes effective August 1, 2008. ~~2008, and expires June 30, 2009. The expiration of this act does not relieve a person's liability to file the report required under G.S. 14-344.1(e) for gross receipts received in June 2009. Liability for acts or omissions before the expiration date of this act are not abated or affected by the expiration.~~ Section 3 of this act applies to offenses committed on or after that date."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 309 A BILL TO BE ENTITLED AN ACT TO REMOVE THE SUNSET ON AN ACT TO PROTECT CUSTOMERS PURCHASING TICKETS VIA THE INTERNET.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 291

Short Title:	Hair Braider Licensure/Cosmetic Art Act.	(Public)
Sponsors:	Representatives Parmon, Womble (Primary Sponsors); Cotham and E. Floyd.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Finance.	

February 25, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE COSMETIC ART ACT TO PROVIDE FOR LICENSURE OF PERSONS ENGAGING IN THE PRACTICE OF NATURAL HAIR BRAIDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 88B-2 reads as rewritten:

"**§ 88B-2. Definitions.**

The following definitions apply in this Chapter:

(1) Apprentice. – A person who is not a manager or operator and who is engaged in learning the practice of cosmetic art under the direction and supervision of a cosmetologist.

(2) Board. – The North Carolina Board of Cosmetic Art Examiners.

(3) Booth. – A workstation located within a licensed cosmetic art shop that is operated primarily by one individual in performing cosmetic art services for consumers.

(4) Booth renter. – A person who rents a booth in a cosmetic art shop.

(4a) Braiding teacher. – An individual licensed by the Board to teach hair braiding.

(5) Cosmetic art. – All or any part or combination of cosmetology, esthetics, hair braiding, or manicuring, including the systematic manipulation with the hands or mechanical apparatus of the scalp, face, neck, shoulders, hands, and feet. Practices included within this subdivision shall not include the practice of massage or bodywork therapy as set forth in Article 36 of Chapter 90 of the General Statutes.

(6) Cosmetic art school. – Any building or part thereof where cosmetic art is taught.

(7) Cosmetic art shop. – Any building or part thereof where cosmetic art is practiced for pay or reward, whether direct or indirect.

(8) Cosmetologist. – Any individual who is licensed to practice all parts of cosmetic art.

(8a) Cosmetology. – The act of arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work upon the hair of a person by any means, including the use of hands, mechanical or electrical apparatus, or appliances or by use of cosmetic or chemical preparations or antiseptics.

(9) Cosmetology teacher. – An individual licensed by the Board to teach all parts of cosmetic art.

(10) Esthetician. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes skin care.

(11) Esthetician teacher. – An individual licensed by the Board to teach only that part of cosmetic art that constitutes skin care.

(11a) Esthetics. – Refers to any of the following practices: giving facials; applying makeup; performing skin care; removing superfluous hair from the body of a person by use of creams, tweezers, or waxing; applying eyelashes to a person, including the application of eyelash extensions, brow or lash color; beautifying the face, neck, arms, or upper part of the human body by use of cosmetic preparations, antiseptics, tonics, lotions, or creams; surface manipulation in relation to skin care; or cleaning or stimulating the face, neck, ears, arms, hands, bust, torso, legs, or feet of a person by means of hands, devices, apparatus, or appliances along with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

(11b) Hair braider. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes hair braiding.

(12) Manicuring. – The care and treatment of the fingernails, toenails, cuticles on fingernails and toenails, and the hands and feet, including the decoration of the fingernails and the application of nail extensions and artificial nails. The term "manicuring" shall not include the treatment of pathologic conditions.

(13) Manicurist. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes manicuring.

(14) Manicurist teacher. – An individual licensed by the Board to teach manicuring.

(14a) Hair braiding. – A service that results in tension on hair strands or roots by twisting, wrapping, extending, weaving, or locking hair by hand or mechanical device. For purposes of this definition, the phrase 'hair braiding' shall include the use of artificial or natural hair.

(15) Shampooing. – The application and removal of commonly used, room temperature, liquid hair cleaning and hair conditioning products. Shampooing does not include the arranging, dressing, waving, coloring, or other treatment of the hair."

SECTION 2. Chapter 88B of the General Statutes is amended by adding a new section to read:

"**§ 88B-10.1. Qualifications for licensing hair braiders.**

The Board shall issue a license to practice as a hair braider to any individual who meets all of the following requirements:

(1) Successful completion of at least 300 hours of a hair braider curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20."

SECTION 3. G.S. 88B-11 is amended by adding a new subsection to read:

"(e) The Board shall issue a license to practice as a hair braiding teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

(1) Holds in good standing a hair braiding license issued by the Board.

(2) Submits proof of either practice as a hair braider in a cosmetic art shop or any Board-approved employment capacity in the cosmetic art industry for a period equivalent to two years of full-time work immediately prior to application or successful completion of at least 320 hours of a hair braider teacher curriculum in an approved cosmetic art school."

SECTION 4. G.S. 88B-12 reads as rewritten:

"**§ 88B-12. Temporary employment permit; extensions; limits on practice.**

(a) The Board shall issue a temporary employment permit to an applicant for licensure as an apprentice, cosmetologist, esthetician, hair braider, or manicurist who meets all of the following:

(1) Has completed the required hours of a cosmetic art school curriculum in the area in which the applicant wishes to be licensed.

(2) Has applied to take the examination within three months of completing the required hours.

(3) Is qualified to take the examination.

(b) A temporary employment permit shall expire six months from the date of graduation from a cosmetic art school and shall not be renewed.

(c) The holder of a temporary employment permit may practice cosmetic art only under the supervision of a licensed cosmetologist, manicurist, hair braider, or esthetician, as appropriate, and may not operate a cosmetic art shop."

SECTION 5. G.S. 88B-13 reads as rewritten:

"**§ 88B-13. Applicants licensed in other states.**

(a) The Board shall issue a license to an applicant licensed as an apprentice, cosmetologist, esthetician, hair braider, or manicurist in another state if the applicant shows:

(1) The applicant is an active practitioner in good standing.

(2) The applicant has practiced at least one of the three years immediately preceding the application for a license.

(3) There is no disciplinary proceeding or unresolved complaint pending against the applicant at the time a license is to be issued by this State.

(4) The licensure requirements in the state in which the applicant is licensed are substantially equivalent to those required by this State.

(b) Instead of meeting the requirements in subsection (a) of this section, any applicant who is licensed as a cosmetologist, esthetician, hair braider, or manicurist in another state shall be admitted to practice in this State under the same reciprocity or comity provisions that the state in which the applicant is licensed grants to persons licensed in this State.

(c) The Board may establish standards for issuing a license to an applicant who is licensed as a teacher in another state. These standards shall include a requirement that the licensure requirements in the state in which the teacher is licensed shall be substantially equivalent to those required in this State and that the applicant shall be licensed by the Board to practice in the area in which the applicant is licensed to teach."

SECTION 6. G.S. 88B-14(b) reads as rewritten:

"(b) The applicant shall list all ~~licensed cosmetologists~~licensees who practice cosmetic art in the shop and shall identify each as an employee or a booth renter."

SECTION 7. G.S. 88B-18 reads as rewritten:

"**§ 88B-18. Examinations.**

(a) Repealed by Session Laws 2006-212, s. 2, effective August 8, 2006.

(b) Each examination shall have both a practical and a written portion.

(c) Examinations for applicants for apprentice, cosmetologist, teacher, esthetician, hair braider, and manicurist licenses shall be given in at least three locations in the State that are geographically scattered. The examinations shall be administered in Board-approved facilities.

(d) An applicant for a cosmetologist, esthetician, manicurist, hair braider, or teacher's license who fails to pass the examination three times may not reapply to take the examination again until after the applicant has successfully completed any additional requirements prescribed by the Board."

SECTION 8. G.S. 88B-20 reads as rewritten:

"**§ 88B-20. Fees required.**

(a) The Board may charge the applicant the actual cost of preparation, administration, and grading of examinations for cosmetologists, apprentices, manicurists, estheticians, hair braiders, or teachers, in addition to its other fees.

(b) The Board may charge application fees as follows:

(1) Inspection of a newly established cosmetic art shop ..... $ 25.00
(2) Reciprocity applicant under G.S. 88B-13 ..... $ 15.00.

(c) The Board may charge license fees as follows:

(1) Cosmetologist ..... $ 39.00 every 3 years
(2) Apprentice ..... $ 10.00 per year
(3) Esthetician ..... $ 10.00 per year
(4) Manicurist ..... $ 10.00 per year
(4a) Hair braider ..... $ 10.00 per year
(5) Teacher ..... $ 10.00 every 2 years
(6) Cosmetic art shop per active booth ..... $ 3.00 per year
(7) Cosmetic art school ..... $ 50.00 per year
(8) Duplicate license ..... $ 1.00.

(d) The Board may require payment of late fees and reinstatement fees as follows:

(1) Apprentice, cosmetologist, esthetician, manicurist, hair braider, and teacher late renewal ..... $ 10.00
(2) Cosmetic art schools and shops late renewal ..... $ 10.00
(3) Reinstatement – cosmetic art schools and shops ..... $ 25.00.

(e) The Board may prorate fees as appropriate."

SECTION 9. G.S. 88B-21 reads as rewritten:

"**§ 88B-21. Renewals; expired licenses; inactive status.**

(a) Each license to operate a cosmetic art shop shall be renewed on or before the first day of February of each year. As provided in G.S. 88B-20, a late fee shall be charged for licenses renewed after February 1. Any license not renewed by March 1 of each year shall expire. A cosmetic art shop whose license has been expired for one year or less shall have the license reinstated immediately upon payment of the reinstatement fee, the late fee, and all unpaid license fees. The licensee shall submit to the Board, as a part of the renewal process, a list of all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(b) Cosmetologist licenses shall be renewed on or before October 1 every three years beginning October 1, 1998. A late fee shall be charged for renewals after that date. Any license not renewed shall expire on October 1 of the year that renewal is required. The Board may develop and implement a plan for staggered license renewal and may prorate license fees to implement such a plan.

(c) Apprentice, esthetician, hair braider, and manicurist licenses shall be renewed annually on or before October 1 of each year. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(d) Teacher licenses shall be renewed every two years on or before October 1. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(e) Prior to renewal of a license, a teacher, cosmetologist, esthetician, hair braider, or manicurist shall annually complete eight hours of Board-approved continuing education for each year of the licensing cycle. A cosmetologist may complete up to 24 hours of required continuing education at any time within the cosmetologist's three-year licensing cycle. Licensees shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection. A licensee who is in active practice as a cosmetologist, esthetician, hair braider, or manicurist, has practiced for at least 10 consecutive years in that ~~profession~~ profession, and is 60 years of age or older does not have to meet the continuing

education requirements of this subsection. A licensee who is in active practice as a cosmetologist and has at least 20 consecutive years of experience as a cosmetologist, does not have to meet the continuing education requirements of this subsection, but shall report any continuing education classes completed to the Board, whether the continuing education classes are Board-approved or not. Promotion of products and systems shall be allowed at continuing education given in-house or at trade shows. Continuing education classes may also be offered in secondary languages as needed. No member of the Board may offer continuing education courses as required by this section.

(f) If an apprentice, cosmetologist, esthetician, manicurist, hair braider, or teacher fails to renew his or her license within five years following the expiration date, the licensee shall be required to pass an examination as prescribed by the Board before the license will be reinstated.

(g) Cosmetic art school licenses shall be renewed on or before October 1 of each year. A late fee shall be charged for licenses renewed after that date. Any license not renewed by November 1 of that year shall expire. A cosmetic art school whose license has been expired for one year or less shall have its license reinstated upon payment of the reinstatement fee, the late fee, and all unpaid license fees.

(h) Upon request by a licensee for inactive status, the Board may place the licensee's name on the inactive list so long as the licensee is in good standing with the Board. An inactive licensee is not required to complete continuing education requirements. An inactive licensee shall not practice cosmetic art for consideration. However, the inactive licensee may continue to purchase supplies as accorded an active licensee. When the inactive licensee desires to be removed from the inactive list and return to active practice, the inactive licensee shall notify the Board of his or her desire to return to active status and pay the required fee as determined by the Board. As a condition of returning to active status, the Board may require the licensee to complete eight to 24 hours of continuing education pursuant to subsection (e) of this section."

SECTION 10. G.S. 88B-22 reads as rewritten:

"**§ 88B-22. Licenses required; criminal penalty.**

(a) Except as provided in this Chapter, no person may practice or attempt to practice cosmetic art for pay or reward in any form, either directly or indirectly, without being licensed as an apprentice, cosmetologist, esthetician, hair braider, or manicurist by the Board.

(b) Except as provided in this Chapter, no person may practice cosmetic art or any part of cosmetic art, for pay or reward in any form, either directly or indirectly, outside of a licensed cosmetic art shop.

(c) No person may open or operate a cosmetic art shop in this State unless a license has been issued by the Board for that shop.

(d) An individual licensed as an ~~esthetician~~ esthetician, hair braider, or manicurist may practice only that part of cosmetic art for which the individual is licensed.

(d1) No person may teach cosmetic art in a Board-approved cosmetic art school unless the person is a teacher licensed under this Chapter. A guest lecturer may be exempt from the requirements of this subsection upon approval by the Board.

(e) An apprentice licensed under the provisions of this Chapter shall apprentice under the direct supervision of a cosmetologist. An apprentice shall not operate a cosmetic art shop.

(f) A violation of this Chapter is a Class 3 misdemeanor."

SECTION 11. G.S. 88B-23(a) reads as rewritten:

"(a) Every apprentice, cosmetologist, esthetician, manicurist, hair braider, and teacher licensed under this Chapter shall display the certificate of license issued by the Board within the shop in which the person works."

SECTION 12. G.S. 88B-24(9) reads as rewritten:

"**§ 88B-24. Revocation of licenses and other disciplinary measures.**

The Board may restrict, suspend, revoke, or refuse to issue, renew, or reinstate any license for any of the following:

...

(9) Violation of G.S. 86A-15 by a cosmetologist, esthetician, hair braider, or manicurist licensed by the Board and practicing cosmetic art in a barber shop."

SECTION 13. Any hair braider who submits proof to the Board that the hair braider is actively engaged in the practice of hair braiding on the effective date of this act, passes an examination conducted by the Board, and pays the required fee under G.S. 88B-20 shall be licensed without having to satisfy the requirements of G.S. 88B-10.1, enacted by Section 2 of this act. A cosmetic art shop that practices hair braiding only and that submits proof to the Board that the shop is actively engaged in the practice of hair braiding on the effective date of this act shall have one year from the date of this act to comply with the requirements of G.S. 88B-14. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B of the General Statutes.

SECTION 14. This act becomes effective October 1, 2009, and applies to acts occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 9

Short Title:	No Texting While Driving.	(Public)
Sponsors:	Representatives Pierce, Harrison, Hall (Primary Sponsors); K. Alexander, M. Alexander, Allred, Bell, Bryant, Carney, Cleveland, Dickson, Dollar, Earle, England, Farmer-Butterfield, Fisher, Goforth, Goodwin, Jackson, Jones, Justice, Luebke, McLawhorn, Spear, Starnes, Tarleton, Underhill, and Weiss.	
Referred to:	Rules, Calendar, and Operations of the House.	

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO USE ADDITIONAL TECHNOLOGY ASSOCIATED WITH A MOBILE PHONE WHILE OPERATING A VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-137.3(a)(1) reads as rewritten:

"(1) Additional technology. – Any technology that provides access to digital media ~~such as~~including, but not limited to, a camera, electronic mail, music, the Internet, text messaging, or games."

SECTION 2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-137.4A. Unlawful use of additional technology.**

(a) Offense. – It shall be unlawful for any person to use additional technology, as defined in G.S. 20-137.3(a)(1), associated with any mobile phone, while operating a vehicle on a public street or highway or public vehicular area.

(b) Exceptions. – The provisions of the section shall not apply to any of the following while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of a public or private ambulance.

(c) Penalty. – A violation of this section shall be an infraction and shall be punishable by a fine of one hundred dollars ($100.00) and the cost of court. No drivers license points or insurance surcharge shall be assessed as a result of a violation of this section. Failure to comply with the provisions of this section shall not constitute negligence per se or contributory negligence by the operator in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a vehicle."

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

HOUSE BILL 9:
No Texting While Driving

2009-2010 General Assembly

Committee:	House Ways & Means / Broadband Connectivity, if favorable, Judiciary III	**Date:**	March 11, 2009
Introduced by:	Reps. Pierce, Harrison, Hall	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H9-CSSA-2[v.2]		

SUMMARY: The Proposed Committee Substitute for House Bill 9 would prohibit the use of additional technologies available on a mobile phone, including text messaging, while operating a motor vehicle for all drivers except for law enforcement officers, firefighters, and ambulance drivers.

[As introduced, this bill was identical to S96, as introduced by Sen. Bingham, which is currently in Senate Judiciary II.]

CURRENT LAW: North Carolina law currently prohibits the use of a mobile telephone by a person under the age of 18 while operating a motor vehicle (G.S. 20-137.3), or by a person operating a school bus (G.S. 20-137.4), with certain limited exceptions. See chart under Background for additional details.

"Mobile telephone" is a device used by subscribers and other users of wireless telephone service to access the service, and includes hand held and hands-free devices. "Wireless telephone service" is a service that is a two-way real-time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 9 would prohibit the use of text messaging, while operating a motor vehicle for all drivers except for law enforcement officers, firefighters, and ambulance drivers.

Sections 1 of the bill clarifies the definition of "additional technology" currently used in the statute prohibiting the use of mobile telephones by individuals under 18 while operating a motor vehicle and by school bus drivers while operating a school bus to exclude text messaging from that definition. These changes leave the offense of using a mobile telephone or additional technology other than text messaging by someone under 18 or while operating a motor vehicle or a school bus driver while operating a school bus and do not change the penalty for those offenses.

Section 2 creates a new offense prohibiting any person from operating a vehicle on a public street or highway or public vehicular area while using text messaging associated with any mobile phone, while the vehicle is in motion.

Exceptions:

- Law Enforcement Officer while in the performance of official duties.
- Fire Department Members while in performance of official duties.
- Operators of public or private ambulances while in performance of official duties.

Penalties Generally:

- Infraction.
- $100.00 fine.
- No drivers license points or insurance surcharge.

Penalties for School Bus Drivers: (These are the same as current law)

- Class 2 misdemeanor
- $100.00 fine.
- No drivers license points or insurance surcharge.

EFFECTIVE DATE: This bill is effective December 1, 2009, and applies to offenses committee on or after that date.

BACKGROUND:

[redacted]	Prohibition	Exceptions	Penalty
G.S. 20-137.3 ***[CURRENT LAW]***	Persons under the age of 18 may not use mobile phone or associated technology while operating a motor vehicle while the vehicle is in motion.	• In emergency situation to call emergency response operator; hospital, physician, or health clinic; ambulance; law enforcement • To call parent, legal guardian, or spouse	• Infraction • $25 fine • No drivers license points, insurance surcharge, or court costs
G.S. 20-137.4 ***[CURRENT LAW]***	Person operating a school bus, activity bus, or any vehicle transporting school children for compensation, may not use mobile phone or associated technology while the vehicle is in motion.	• In an emergency situation, defined as circumstances such as medical concerns, unsafe road conditions, matters of public safety, or mechanical problems that create a risk of harm for operator and passengers	• Class 2 misdemeanor (1-30 days comm punishment with prior convictions) • Minimum $100 fine • No drivers license points or insurance surcharge

Wendy Graf-Ray and Heather Fennell substantially contributed to this summary.

H9-SMSA-10(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 9

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

H9-ASA-1 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
H9-CSSA-2[v.2]

Date _____ ,2009

Representative Tillis

moves to amend the bill on page 1, line14
by inserting "hand-held" between "any" and "mobile"

and on page 1, lines 17-19
by rewriting those lines to read:
"(b) Exceptions. – The provisions of this section shall not apply to any of the following:
(1) Use by a law enforcement officer, a member of a fire department, or the operator of a public or private ambulance, while in the performance of their official duties.
(2) The use of voice operated technology."

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. H9 DATE _____

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

COMMITTEE SUBSTITUTE H9-CSSA-2 [v.2]

(Rep.) Hilton
Sen.)

amendment
1 moves to amend the ~~bill~~ on page 1, line 8
2 ( ) WHICH CHANGES THE TITLE
3 by inserting between "ambulance," and "while"
4 the following: "when necessary,"
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12
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SIGNED Mary Hilton

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, March 18, 2009

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, March 18, 2009, in Room 425 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Lucy Allen, Jim Gulley, Dewey Hill, Mark Hilton and Sarah Stevens. Staff in attendance: Brenda Carter, Peter Capriglione, Heather Fennell and Susan Seitz. House Sergeant-at-Arms assisting: Marvin Lee, Bob Rossi, and John Brandon. House Pages: Darius Taylor from Wake County sponsored by Speaker Hackney and Jandy Clemmons from Wake County sponsored by Representative Weiss. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. Chairman Faison is the primary sponsor for House Bill 135 so he turned the meeting over to Vice-Chair Coates. The following bills were placed before the Committee:

House Bill 135–A BILL TO BE ENTITLED: an act permitting certain broadband services providers that provide voice grade communications services within a defined service territory or franchise area to offer such voice grade service as an incident to broadband service outside the providers' service territory or franchise area. Rep. Tolson moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Faison to explain the bill. After the explanation of the bill Chairman Coates opened the floor for questions and comments. Rep. Tolson was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 3*)

House Bill 179–A BILL TO BE ENTITLED: an act to establish and maintain an accessible electronic information service for blind and disabled persons and to appropriate funds for the service. The Chair called upon the bill sponsor Rep. Adams to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 4*)

House Bill 463–A BILL TO BE ENTITLED: an act to redefine the term "antique firearm" with regard to the law that regulates the transfer of handguns and with regard to the felony firearms act. Rep. Coates moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Goforth to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tolson was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 5*)

Chairman Faison introduced our speaker of the day, Herb Crenshaw from AT&T North Carolina. Mr. Crenshaw gave an update on the Connected Nation project:

Herb Crenshaw (Executive Director – Legislative Affairs, AT&T N.C.) was recognized to present to the committee. Mr. Crenshaw's hand out is attached. *(Attachment 6)* Below are some key points of his presentation:

- Working hand and hand with other providers they were faced with 2 questions that arose out of The House Select Committee on High Speed Internet in Rural areas 1) Access broad band services and 2) Broad band adoption in other words why people who have access choose not to use it.
- It was discovered that more granular information was need to determine where access.
- Connected Nations will show where service is and where it is not available. They will provide access on-line, state maps, county maps and economic developing regions.
- The map will also go as far as consumers typing in there address and being able to pin point if broadband is in the area and who provides it.

Chairman Faison opened the floor to questions from the members and visitors.

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:39 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, March 18, 2009
1:00PM
Room 425, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **Speaker Subject – Update on Connected Nation**
   Herb Crenshaw (Executive Director-Legislative Affairs, AT&T N.C.)

4. **House Bills**

1.	HB 135	Broadband Service Providers	Representative Faison
2.	HB 179	Accessible Electronic Info Act/ Blind/Disabled	Representative Adams
3.	HB 463	Amend Antique Firearm Definition	Representative Goforth

5. **Adjourn**

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Allison Cooper	RRW Attorneys
Angie Bailey	The e-NC Authority
John Correllus	NC Dept. of Commerce
Bill CRAIGIE	verizon wireless
Britton Allen	Allen Law Offices, PLLC
Alicia Jones	MWC
Ralph L. Weddington	Visitor Charlotte NC
Bob Walker	Alliance of Automobile Dealers
TOM WINSTON	Dept of Public Instruction
JULIE KAY	DEPT OF PUBLIC INSTRUCTION
PAUL Meyer	NCLM

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Dave Patton	Sierra - NC Chapter
Deanna Kitchen	NCUC - Public Staff
Heather Bartlett	Hunton & Williams
Jim Tarman	AT+T
Carlos E. Sanchez	AT&T
Joe McClees	McClees Consulting
Lemuel W. Hinton	NC Utilities Commission
Catharine Rice	Acton Audits, LLC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 135

Short Title:	Broadband Service Providers.	(Public)
Sponsors:	Representatives Faison, Tolson, Haire, Tillis (Primary Sponsors); Adams, K. Alexander, M. Alexander, Allred, Bryant, England, E. Floyd, Guice, Hurley, Insko, Jones, Lucas, Mobley, Tarleton, and Wray.	
Referred to:	Ways & Means/Broadband Connectivity, if favorable, Public Utilities.	

February 12, 2009

A BILL TO BE ENTITLED

AN ACT PERMITTING CERTAIN BROADBAND SERVICES PROVIDERS THAT PROVIDE VOICE GRADE COMMUNICATIONS SERVICES WITHIN A DEFINED SERVICE TERRITORY OR FRANCHISE AREA TO OFFER SUCH VOICE GRADE SERVICE AS AN INCIDENT TO BROADBAND SERVICE OUTSIDE THE PROVIDERS' SERVICE TERRITORY OR FRANCHISE AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-113 is amended by adding a new subsection to read:

"(c) Any broadband services provider that provides voice grade communication services within a defined service territory or franchise area, and elects to provide broadband services outside its service territory or franchise area, may provide such voice grade service as an incident to such broadband service without violating its service territory restrictions or franchise agreement."

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

HOUSE BILL 135:
Broadband Service Providers

2009-2010 General Assembly

Committee:	House Ways & Means / Broadband Connectivity, if favorable, Public Utilities	**Date:**	March 17, 2009
Introduced by:	Reps. Faison, Tolson, Haire, Tillis	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to First Edition H135-CSRV-5		

SUMMARY: ***This proposed committee substitute would permit broadband services providers that provide telephone service within a defined service area to also offer telephone service to its broadband customers in areas contiguous to the provider's defined service area.***

CURRENT LAW: The laws pertaining to utility franchises are set out in Article 6 of The Public Utilities Act. Under G.S. 62-113, each utility franchise must specify the service to be rendered and the route over which and the territory within which a public utility is authorized to operate. The Utilities Act applies to telephone service, but broadband service is not regulated by the Utilities Commission.

BILL ANALYSIS: The bill would amend G.S. 62-113 concerning the terms and conditions of public utility franchises. The bill would specify that a broadband services provider that provides telephone service within a defined service territory or franchise area may, in any area contiguous to its defined territory, provide telephone service to a customer as an incident to broadband services. The provision would apply only when the incumbent telecommunications or cable provider is not providing broadband service to the customer.

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

BACKGROUND: The bill is a recommendation of the House Select Committee on High Speed Internet Access in Rural Areas.

H135-SMRV-10(CSRV-5) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 135
PROPOSED COMMITTEE SUBSTITUTE H135-CSRV-5 [v.3]

3/18/2009 12:50:02 PM

Short Title: Broadband Service Providers. (Public)

Sponsors:

Referred to:

February 12, 2009

A BILL TO BE ENTITLED

AN ACT PERMITTING CERTAIN BROADBAND SERVICE PROVIDERS THAT PROVIDE VOICE GRADE COMMUNICATIONS SERVICES WITHIN A DEFINED SERVICE TERRITORY OR FRANCHISE AREA TO OFFER SUCH VOICE GRADE SERVICE AS AN INCIDENT TO BROADBAND SERVICE IN AREAS CONTIGUOUS TO THE PROVIDERS' SERVICE TERRITORY OR FRANCHISE AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-113 is amended by adding a new subsection to read:

"(c) Any broadband service provider that provides voice grade communication services within a defined service territory or franchise area, and elects to provide broadband service in areas contiguous to its service territory or franchise area, may provide such voice grade service as an incident to such broadband service to a customer when the incumbent telecommunications or cable provider is not currently providing broadband service to the customer, without violating its service territory restrictions or franchise agreement."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 135 A BILL TO BE ENTITLED AN ACT PERMITTING CERTAIN BROADBAND SERVICES PROVIDERS THAT PROVIDE VOICE GRADE COMMUNICATIONS SERVICES WITHIN A DEFINED SERVICE TERRITORY OR FRANCHISE AREA TO OFFER SUCH VOICE GRADE SERVICE AS AN INCIDENT TO BROADBAND SERVICE OUTSIDE THE PROVIDERS' SERVICE TERRITORY OR FRANCHISE AREA.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on PUBLIC UTILITIES.

(FOR JOURNAL USE ONLY)

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

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

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

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

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

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

HOUSE BILL 179*

Short Title:	Accessible Electronic Info Act/Blind/Disabled.	(Public)
Sponsors:	Representatives Adams, Wiley (Primary Sponsors); M. Alexander, Faison, E. Floyd, Glazier, Harrison, Hurley, Insko, Jones, Lucas, Mackey, McLawhorn, Pierce, Wainwright, and Wray.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Appropriations.	

February 18, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AND MAINTAIN AN ACCESSIBLE ELECTRONIC INFORMATION SERVICE FOR BLIND AND DISABLED PERSONS AND TO APPROPRIATE FUNDS FOR THE SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 168 of the General Statutes is amended by adding a new Article to read:

"Article 4.

"Accessible Electronic Information Act.

"**§ 168-30. Short title and findings.**

(a) Short Title. – This Article shall be known and may be cited as the 'Accessible Electronic Information Act.'

(b) Legislative Findings. – The General Assembly finds and declares all of the following:

(1) Thousands of citizens in the State have disabilities, including blindness or visual impairment, that prevent them from using conventional print material.

(2) The State fulfills an important responsibility by providing books and magazines prepared in Braille, audio, and large-type formats made available to blind and disabled persons.

(3) The technology, transcription methods, and means of distribution used for these materials are labor-intensive and cannot support rapid dissemination to individuals in rural and urban areas throughout the State.

(4) Lack of direct and prompt access to information included in newspapers, magazines, newsletters, schedules, announcements, or other time-sensitive materials limits literacy, participation, and educational opportunities for blind and disabled persons.

(5) This limitation can best be overcome through use of high-speed computer and telecommunications technology, combined with customized software, that provides a practical and cost-effective means to convert electronic text-based information, including daily newspapers, into synthetic speech suitable for statewide distribution with modern telecommunications technology.

(6) Low-cost interstate telecommunications rates make distribution of electronic text-based information to blind and disabled persons both efficient and cost-effective for the State.

(7) Federal funds have been used to develop the technology and infrastructure needed for statewide toll-free access to daily newspapers and other timely information of local, State, and national interest, providing an efficient and cost-effective means of reader registration, content acquisition, and interstate telecommunications support.

(8) Use of this accessible electronic information service will enhance the State's current efforts to meet the needs of blind and disabled persons for access to information that is otherwise available in print, reducing isolation and supporting full integration and equal access for these persons.

"**§ 168-31. Definitions.**

The following definitions apply in this section:

(1) Accessible electronic information service. – A service where news and other timely information, including newspapers, is provided to blind and disabled persons from a multistate service center, using high-speed computers and telecommunications technology for interstate acquisition of content and rapid distribution in a form appropriate for use by blind and disabled persons.

(2) Blind and disabled persons. – Those individuals who are eligible for library loan services through the Library of Congress and the North Carolina Library for the Blind and Physically Handicapped pursuant to 36 C.F.R. § 701.10(b).

(3) Director. – The Director of the Division of Services for the Blind in the Department of Health and Human Services.

(4) Division. – The Division of Services for the Blind in the Department of Health and Human Services.

(5) Qualified entity. – An agency, instrumentality, or political subdivision of the State or a nonprofit organization that:

a. Provides interstate access for blind and disabled persons to read daily newspapers by producing audio editions by computer.

b. Provides a means of program administration or reader registration on the Internet.

"**§ 168-32. Administration of service.**

The Division shall establish, operate, promote, and administer a statewide accessible electronic information service. The Director shall enter into an agreement with a qualified entity to provide an accessible electronic information service for blind and disabled persons. The Division shall plan for continuation of the service from year to year and maximize use of federal and other funds available by obtaining grant or in-kind support from appropriate programs and securing access to low-cost interstate rates for telecommunications by reimbursement or otherwise."

SECTION 2. There is appropriated from the General Fund to the Department of Health and Human Services the sum of seventy-five thousand dollars ($75,000) for the 2009-2010 fiscal year to be used by the Division of Services for the Blind within the Department of Health and Human Services to establish an accessible electronic information service for blind and disabled persons in this State.

SECTION 3. This act becomes effective July 1, 2009.

HOUSE BILL 179:
Accessible Electronic Info Act/Blind/Disabled

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Appropriations	**Date:**	March 18, 2009
Introduced by:	Reps. Adams, Wiley	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 179 would require the Division of Services to the Blind to operate a statewide accessible electronic information service to provide news and other timely information to blind and disabled persons, and would appropriate $75,000 for the 2009-2010 fiscal year to establish the service.***

[As introduced, this bill was identical to S226, as introduced by Sen. Dorsett, which is currently in Senate Appropriations/Base Budget.]

BILL ANALYSIS: House Bill 179 would enact the Accessible Electronic Information Act. in Chapter 168 of the General Statutes. The act would require the Division of Services to the Blind (Division) to operate a statewide accessible electronic information service to provide news and other timely information to blind and disabled persons. The service would involve a multistate service center using high-speed computers and telecommunications technology to acquire and distribute content in a form appropriate for use by blind and disabled persons. This means that users would be able to interact with the technology in the ways that work best for them. The service might provide information in more than one way such as: auditory feedback from a computer for a person who is blind; or closed captioning on a video for a person who is deaf. The bill directs the Director of the Division to enter an agreement with a qualified entity to provide the service and to plan for the continuation of the service from year to year – utilizing federal and other funds or grants. The bill appropriates $75,000 to DHHS for the 2009-2010 fiscal, for use by the Division in establishing the accessible electronic information service.

EFFECTIVE DATE: The bill would become effective July 1, 2009.

H179-SMRV-11(e1) v2

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 179 A BILL TO BE ENTITLED AN ACT TO ESTABLISH AND MAINTAIN AN ACCESSIBLE ELECTRONIC INFORMATION SERVICE FOR BLIND AND DISABLED PERSONS AND TO APPROPRIATE FUNDS FOR THE SERVICE.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on APPROPRIATIONS.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

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

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

HOUSE BILL 463

Short Title:	Amend Antique Firearm Definition.	(Public)
Sponsors:	Representatives Goforth; and Wray.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary III.	

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO REDEFINE THE TERM "ANTIQUE FIREARM" WITH REGARD TO THE LAW THAT REGULATES THE TRANSFER OF HANDGUNS AND WITH REGARD TO THE FELONY FIREARMS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-409.11 reads as rewritten:

"**§ 14-409.11. "Antique firearm" defined.**

(a) The term "antique firearm" means any of the following:

(1) Any firearm (including any firearm with a matchlock, flintlock, wheellock, snaphaunce, percussion cap, or similar type of ignition system) manufactured on or before ~~1898.~~1918.

(2) Any replica of any firearm described in subdivision (1) of this subsection if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition.

(2a) Any replica of any firearm described in subdivision (1) of this subsection that uses rimfire or conventional center-fire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(3) Any muzzle loading rifle, muzzle loading shotgun, muzzle loading firearm, or muzzle loading pistol, which is designed to use black powder or a black powder substitute, and which cannot use fixed ~~ammunition.~~ammunition or be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

~~(b) For purposes of this section, the term "antique firearm" shall not include any weapon which:~~

~~(1) Incorporates a firearm frame or receiver.~~

~~(2) Is converted into a muzzle loading weapon.~~

~~(3) Is a muzzle loading weapon that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.~~"

SECTION 2. This act becomes effective December 1, 2009. 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 463:
Amend Antique Firearm Definition

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	March 18, 2009
Introduced by:	Rep. Goforth	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H463-CSSA-6		

SUMMARY: ***House Bill 463 redefines the term "antique firearm" with regard to the law that regulates the transfer of handguns and with regard to the Felony Firearms Act.***

CURRENT LAW: The term "antique firearm" is defined in G.S. 14-409.11. North Carolina exempts antique firearms from the pistol permit requirement to buy a handgun (see G.S. 14-402 below) and also from the prohibition on felons possessing firearms (see G.S. 14-415.1 below).

BILL ANALYSIS:

House Bill 463 would amend the definition of "antique firearm" for purposes of State law by adding additional language that is contained in the federal definition of "antique firearm" (see 18 U.S.C. §921 below).

EFFECTIVE DATE: This act becomes effective December 1, 2009. 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.

STATUTES:

Article 52A.

Sale of Weapons in Certain Counties.

§ 14-402. Sale of certain weapons without permit forbidden.

(a) It is unlawful for any person, firm, or corporation in this State to sell, give away, or transfer, or to purchase or receive, at any place within this State from any other place within or without the State any pistol or crossbow unless: (i) a license or permit is first obtained under this Article by the purchaser or receiver from the sheriff of the county in which the purchaser or receiver resides; or (ii) a valid North Carolina concealed handgun permit is held under Article 54B of this Chapter by the purchaser or receiver who must be a resident of the State at the time of the purchase.

It is unlawful for any person or persons to receive from any postmaster, postal clerk, employee in the parcel post department, rural mail carrier, express agent or employee, railroad agent or employee within the State of North Carolina any pistol or crossbow without having in his or their possession and without exhibiting at the time of the delivery of the same and to the person delivering the same the permit from the sheriff as provided in G.S. 14-403. Any person violating the provisions of this section is guilty of a Class 2 misdemeanor.

(b) This section does not apply to an antique firearm or an historic edged weapon.

(c) The following definitions apply in this section:

(1) Antique firearm. – Defined in G.S. 14-409.11.

(2) Bolt. – A projectile made to be discharged from a crossbow. The bolt differs from an arrow in that the bolt is heavier and shorter than an arrow.

(3) Crossbow. – A mechanical device consisting of, but not limited to, strings, cables, and prods transversely mounted on either a shoulder or hand-held stock. This device

is mechanically held at full or partial draw and released by a trigger or similar mechanism that is incorporated into a stock or handle. When operated, the crossbow discharges a projectile known as a bolt.

(4) Historic edged weapon. – Defined in G.S. 14-409.12. (1919, c. 197, s. 1; C.S., s. 5106; 1923, c. 106; 1947, c. 781; 1959, c. 1073, s. 2; 1971, c. 133, s. 2; 1979, c. 895, ss. 1, 2; 1993, c. 287, s. 1; c. 539, s. 284; 1994, Ex. Sess., c. 24, s. 14(c); 2004-183, s. 1; 2004-203, s. 1.)

Article 54A.

The Felony Firearms Act.

§ 14-415.1. Possession of firearms, etc., by felon prohibited.

(a) It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction as defined in G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm muffler or firearm silencer. ***This section does not apply to an antique firearm, as defined in G.S. 14-409.11.***

Every person violating the provisions of this section shall be punished as a Class G felon.

(b) Prior convictions which cause disentitlement under this section shall only include:

(1) Felony convictions in North Carolina that occur before, on, or after December 1, 1995; and

(2) Repealed by Session Laws 1995, c. 487, s. 3, effective December 1, 1995.

(3) Violations of criminal laws of other states or of the United States that occur before, on, or after December 1, 1995, and that are substantially similar to the crimes covered in subdivision (1) which are punishable where committed by imprisonment for a term exceeding one year.

When a person is charged under this section, records of prior convictions of any offense, whether in the courts of this State, or in the courts of any other state or of the United States, shall be admissible in evidence for the purpose of proving a violation of this section. The term "conviction" is defined as a final judgment in any case in which felony punishment, or imprisonment for a term exceeding one year, as the case may be, is permissible, without regard to the plea entered or to the sentence imposed. A judgment of a conviction of the defendant or a plea of guilty by the defendant to such an offense certified to a superior court of this State from the custodian of records of any state or federal court shall be prima facie evidence of the facts so certified.

(c) The indictment charging the defendant under the terms of this section shall be separate from any indictment charging him with other offenses related to or giving rise to a charge under this section. An indictment which charges the person with violation of this section must set forth the date that the prior offense was committed, the type of offense and the penalty therefor, and the date that the defendant was convicted or plead guilty to such offense, the identity of the court in which the conviction or plea of guilty took place and the verdict and judgment rendered therein. (1971, c. 954, s. 1; 1973, c. 1196; 1975, c. 870, ss. 1, 2; 1977, c. 1105, ss. 1, 2; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; 1989, c. 770, s. 3; 1993, c. 539, s. 1245; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 487, s. 3; c. 507, s. 19.5(k); 2004-186, s. 14.1; 2006-259, s. 7(b).)

18 U.S.C. §921(a)(16)

(16) The term "antique firearm" means—

(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or

(B) any replica of any firearm described in subparagraph (A) if such replica—

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or

(C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 463
PROPOSED COMMITTEE SUBSTITUTE H463-CSSA-6 [v.1]

3/18/2009 11:26:56 AM

Short Title: Amend Antique Firearm Definition. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO REDEFINE THE TERM "ANTIQUE FIREARM" WITH REGARD TO THE LAW THAT REGULATES THE TRANSFER OF HANDGUNS AND WITH REGARD TO THE FELONY FIREARMS ACT.

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(2a) Any replica of any firearm described in subdivision (1) of this subsection that uses rimfire or conventional center-fire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(3) Any muzzle loading rifle, muzzle loading shotgun, muzzle loading firearm, or muzzle loading pistol, which is designed to use black powder or a black powder substitute, and which cannot use fixed ammunition.

(b) For purposes of this section, the term "antique firearm" shall not include any weapon which:

(1) Incorporates a firearm frame or receiver.

(2) Is converted into a muzzle loading weapon.

(3) Is a muzzle loading weapon that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof."

SECTION 2. This act becomes effective December 1, 2009. 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.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 463 A BILL TO BE ENTITLED AN ACT TO REDEFINE THE TERM "ANTIQUE FIREARM" WITH REGARD TO THE LAW THAT REGULATES THE TRANSFER OF HANDGUNS AND WITH REGARD TO THE FELONY FIREARMS ACT.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

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

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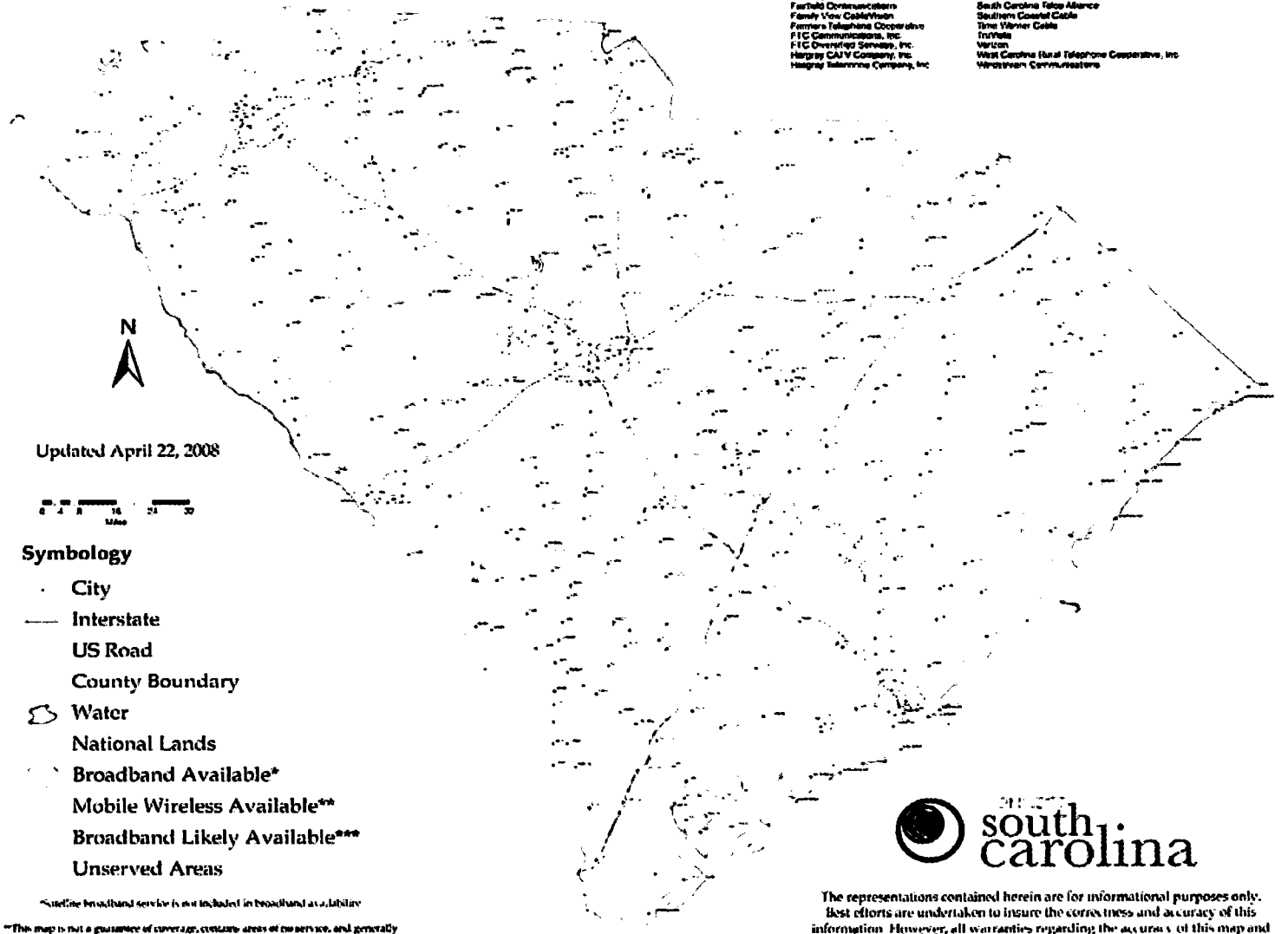
Broadband Service Inventory for the State of South Carolina

Submit questions or recommended changes to maps@connectednation.org

A digital copy of this map can be obtained at: http://connectednation.com/state_programs/south_carolina.php

36 Providers Are Represented on This Map Including:

AT&T	Home Telephone Company
ACSec Tel	Horry Telephone Cooperative, Inc
Carolina Wireless Networks	HTC Communications, LLC
Atlantic Broadband	MainStreet Wireless
Berkeley Cable TV	Northland Cable
Bluffton Telephone Company	Palmetto Rural Telephone Cooperative, Inc
Charter Communications	PBT Telecom
Chesnee Telephone Company	Pee Dee Online
Comcast Cable	Personally Complete
Comporium	Piedmont Rural Telephone Cooperative, Inc
Embarq	Sandhill Telephone Cooperative, Inc
FastTelk Communications	South Carolina Telco Alliance
Family View CableVision	Southern Coastal Cable
Farmers Telephone Cooperative	Time Warner Cable
FTC Communications, Inc	TruVista
FTC Diversified Services, Inc	Verizon
Hargray CATV Company, Inc	West Carolina Rural Telephone Cooperative, Inc
Hargray Telephone Company, Inc	Windstream Communications



Symbology

- City
- Interstate
- US Road
- County Boundary
- Water
- National Lands
- Broadband Available*
- Mobile Wireless Available**
- Broadband Likely Available***
- Unserved Areas

*Satellite broadband service is not included in broadband availability

**This map is not a guarantee of coverage, contains areas of no service, and generally predicts where outdoor coverage is available. Equipment, topography, and environment affect service

***In these areas, there is a strong likelihood for broadband availability; however, technology limitations in select areas may limit service to some homes

Connected Nation has worked with broadband providers throughout the State to identify the gaps in broadband service - the first step in a statewide effort to "fill the gaps" for 100% broadband availability.

south carolina

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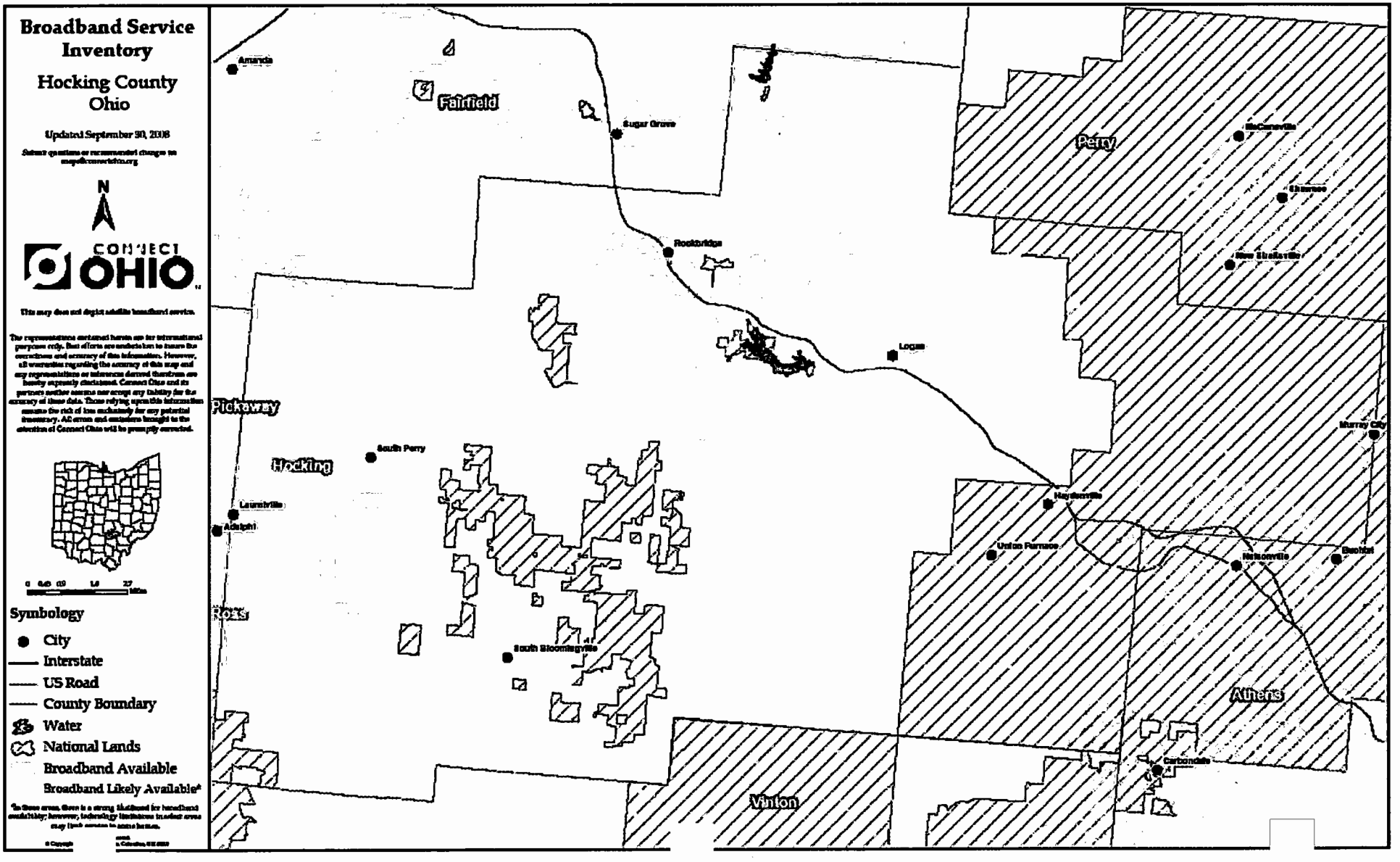
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Broadband Availability Maps

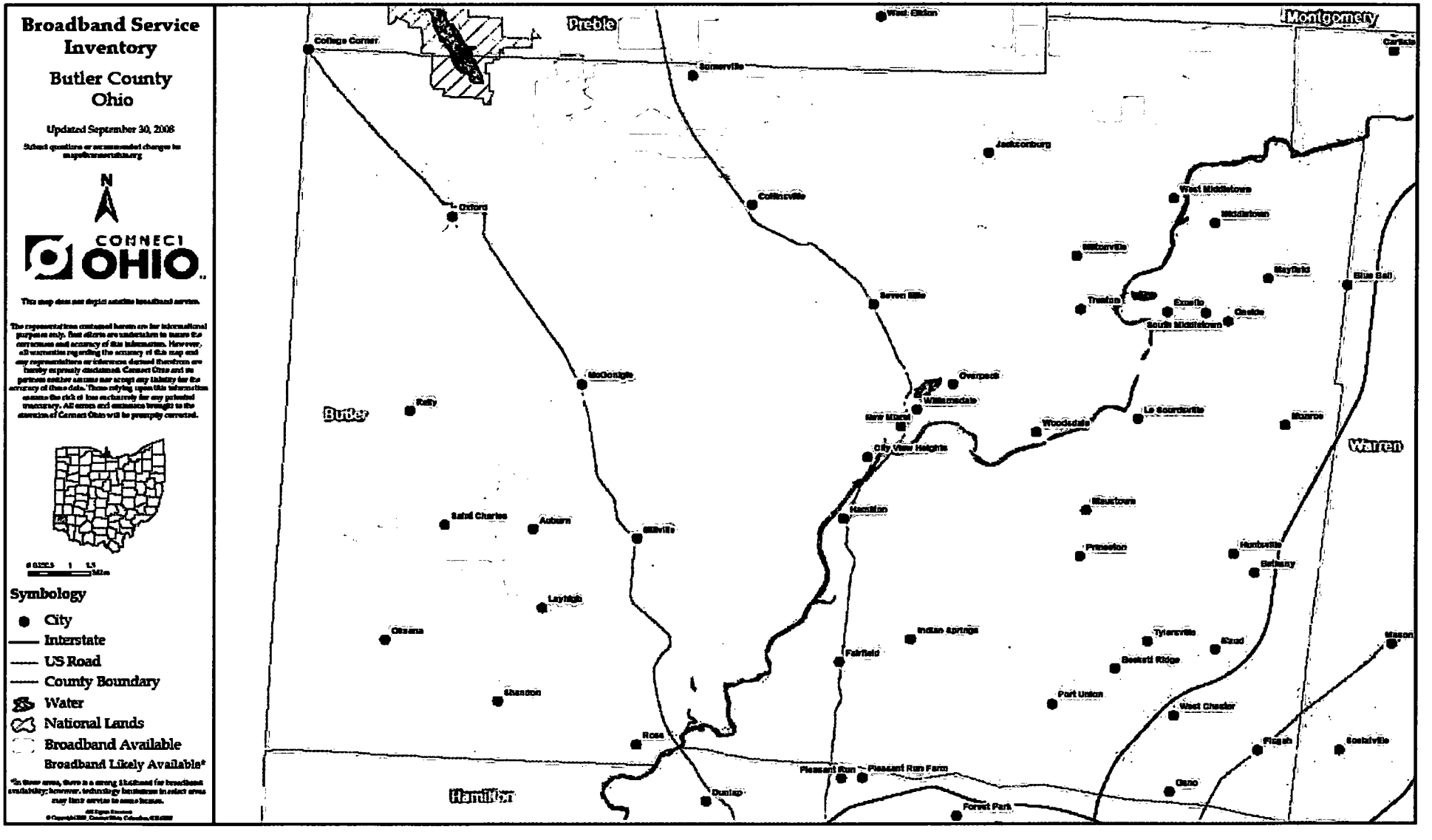
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Community-level data for providers, policymakers, & local planning efforts

Hocking County, Ohio

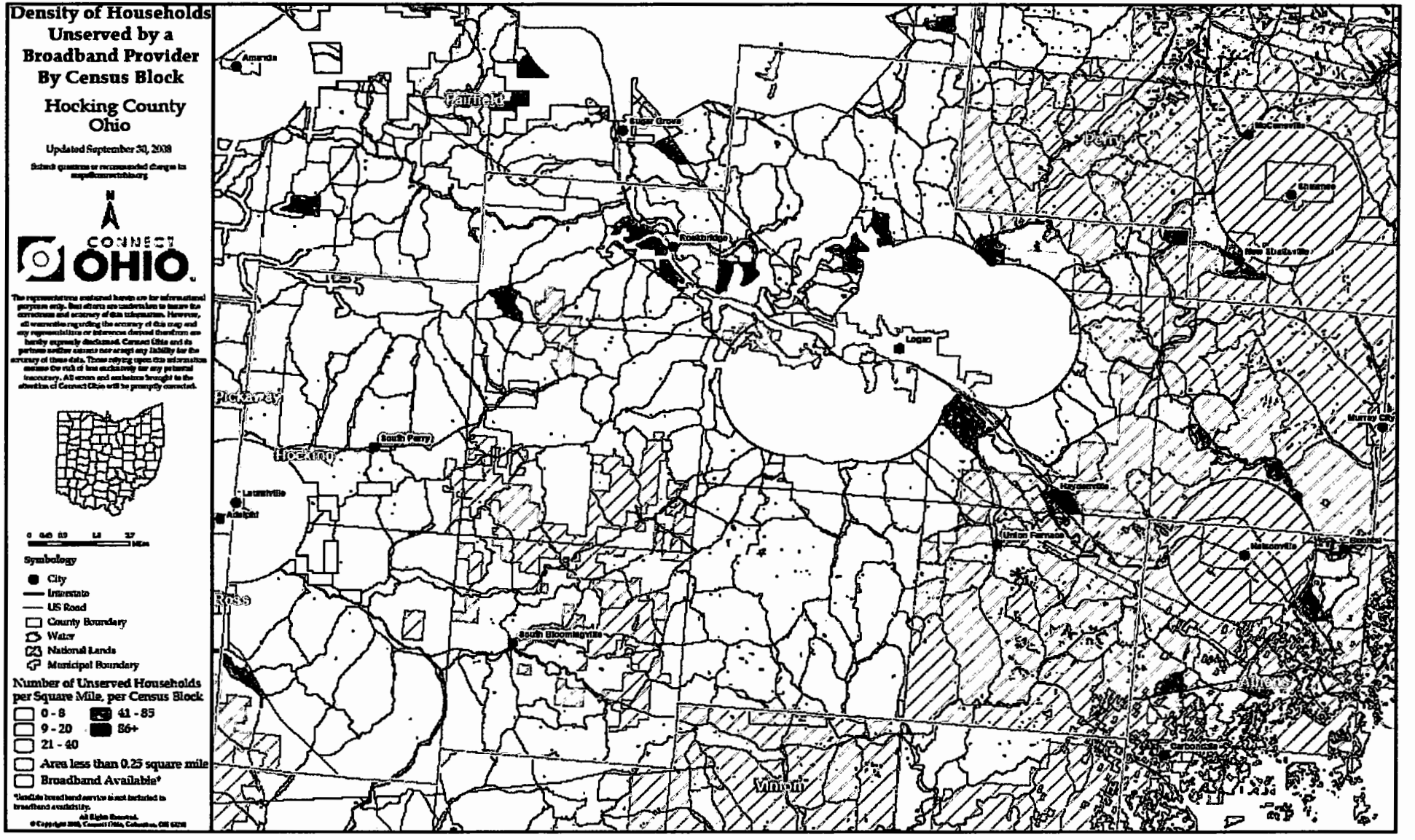


Community-level data for providers, policymakers, & local planning efforts



Community-level data for providers, policymakers, & local planning efforts

Hocking County, Ohio

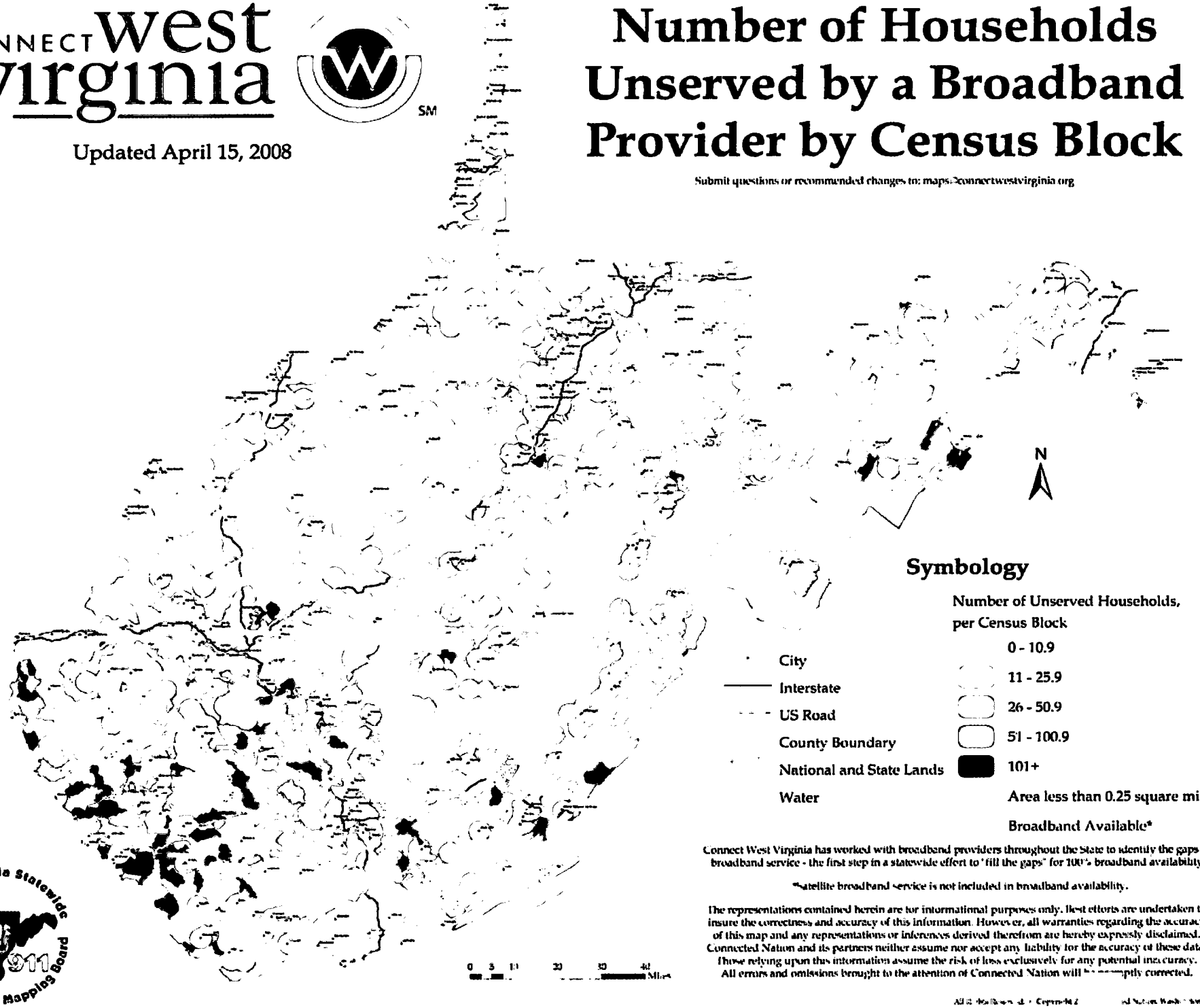


CONNECT West Virginia

Updated April 15, 2008

Number of Households Unserved by a Broadband Provider by Census Block

Submit questions or recommended changes to: maps@connectwestvirginia.org



Symbology

- City
- Interstate
- US Road
- County Boundary
- National and State Lands
- Water

Number of Unserved Households, per Census Block

- 0 - 10.9
- 11 - 25.9
- 26 - 50.9
- 51 - 100.9
- 101+

Area less than 0.25 square mile

Broadband Available*

Connect West Virginia has worked with broadband providers throughout the State to identify the gaps in broadband service - the first step in a statewide effort to "fill the gaps" for 100% broadband availability.

*Satellite broadband service is not included in broadband availability.

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Obama's Online Opportunities II

If you build it, will they log on?

By John B. Horrigan, Associate Director for Research, Pew Internet & American Life Project

Investment in broadband has become part of the broader discussion about President Obama's economic stimulus package. Even though the size of the stimulus and the share that might be devoted to broadband are still unspecified, it seems likely that the new Administration will take steps to encourage investment in broadband infrastructure.

Although job creation is the main topic in this debate, there are really three policy goals associated with broadband in the stimulus package: creating new jobs, creating new broadband subscribers, and improving the broadband experience for all subscribers through faster networks. The goals are obviously related. New or better broadband infrastructure might attract new subscribers or encourage existing subscribers to upgrade to faster service. New (or upgrading) subscribers place demands on communications infrastructure, which in turn may require more workers to serve them. How easy will it be to increase the pool of broadband subscribers or to encourage existing ones to upgrade their connection speeds? Two surveys conducted by the Pew Research Center's Internet & American Life Project help address these issues.

Barriers to adoption

Our May 2008 survey asked dial-up users why they do not have a broadband connection at home and our December 2007 asked non-internet users about the reasons they do not use the internet. The table below summarizes the results.

Reasons people do not have broadband at home		
What would it take to get you to switch to broadband? (asked of dial-up users)		
Dial-up users = 9% of all adults		
	% of dial-up users	**% of all adults**
Price must fall	35%	3.2%
Nothing would get me to switch	19%	1.7%
Don't know	16%	1.4%
It would have to become available where I live	14%	1.3%
Other	11%	1.0%
What is the MAIN reason you don't use the internet or email? (asked of non-users)		
Non-internet users = 25% of all adults		
	% of non-users	**% of all adults**
Not interested in getting online	33%	8.3%
Can't get access	13%	3.3%
Difficult	9%	2.3%
Other reason	9%	2.3%
Too expensive	7%	1.8%
Too busy/no time	7%	1.8%
Waste of time	7%	1.8%
Don't have computer	4%	1.0%
Too old to learn	3%	0.8%
Physically unable	3%	0.8%

To try to make better sense of this variety of reasons, the table below consolidates the data into four categories.

Summary of reasons dial-up and non-internet users cite for not having broadband at home		
	% of dial-up + non-online users	**% of all adults**
Usability (difficult + waste of time + too old + physically unable)	17%	5.5%
Price (price must fall + too expensive + no computer)	18%	5.9%
Availability	14%	4.5%
Relevance (not interested in getting online + nothing could get me to switch + too busy + other unspecified reasons)	51%	16.4%

Though the outlines of Obama's broadband stimulus plan are not yet clear, two barriers identified above are likely targets of such a package: availability and price. These are the main issues for about a third of the adult population currently without broadband service. Providing incentives to build broadband infrastructure directly addresses the availability problem and could be of particular help to Americans living in rural areas, where 24% of dial-up users say they cannot get broadband because high-speed infrastructure doesn't reach their home.

The price barrier might be addressed in the Obama package, as has been proposed by Free Press and others, by changing the Lifeline and Link-up programs that presently provide subsidies for telephone access so that the programs can also subsidize home broadband access.[1]

Two-thirds of non-broadband adopters, however, do not seem likely targets of efforts to boost the economy through broadband investment. Usability of broadband and other information appliances is mainly a matter for the private sector; friendlier design might make getting a new information service viable for some people.

The largest barrier – relevance – is arguably a catch-all category that captures a range of adoption hurdles that people cannot crisply articulate. When half of dial-up and non-users cite reasons such as "not interested" or "nothing could get me to switch," it seems clear that networked digital resources do not play enough of a role in their lives to justify a broadband connection.

Addressing the reasons pertaining to relevance is likely to be time-consuming and difficult. Non-adopters are older and lower-income Americans, and it would take time to undertake the training and support needed to turn them into competent online users. Doing this is not a Herculean task -- plenty of models exist to provide online training for low-income and elderly people. But legislators may decide that an economic stimulus package is not the vehicle for expanding on these models.

Wanting More Speed

Finally, let's turn to the question of the demand for more speed among existing high-speed users. Our May 2008 survey found that 29% of broadband users say they already pay more for home broadband speeds that are higher than the standard ones advertised by their carriers. The remaining 71% either have the standard package or don't know whether they pay a premium. Assuming new "souped up" broadband costs more than existing offerings, at least one-third of home high-speed users are good candidates to take that step.[1]

So, if more and faster broadband is provided, will people come? The analysis here suggests that the answer is "yes," but that it may take longer than some advocates anticipate. To be sure, targeted efforts to address infrastructure gaps and cost barriers could, within a few years, boost broadband adoption by as much as 10 percentage points. And one-third of existing broadband subscribers are low hanging fruit to adopt faster broadband soon after it is available. However, one-in-five Americans currently don't have broadband for reasons that won't be addressed by price cuts or a fiber node in the neighborhood. It will take time to get them up and running on broadband -- probably longer than the impacts of the stimulus package are intended to last.

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[1] S. Derek Turner, "Down Payment on Our Digital Future," *Free Press*, December 2008, available online at: http://www.freepress.net/files/DownPayment_DigitalFuture.pdf.

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[1] It is possible that new broadband infrastructure might result in greater facilities-based competition in the broadband market, in which case "souped up" broadband might be subject to competitive pressures that result in lower prices for consumers.

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, March 25, 2009

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, March 25, 2009, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Lucy Allen, Angela Bryant, Mitch Gillespie, Jim Gulley, Phil Haire, Dewey Hill, Mark Hilton, Sarah Stevens and Winkie Wilkins. Staff in attendance: Brenda Carter, Peter Capriglione and Susan Seitz. House Sergeant-at-Arms assisting: Marvin Lee, John Brandon and Bob Rossi. House Pages: Miranda Salser from Catawba County and Dominique Murray from Moore County both sponsored by Speaker Hackney. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. The following bills were placed before the Committee:

House Bill 291–A BILL TO BE ENTITLED: an act amending the cosmetic art act to provide for licensure of persons engaging in the practice of natural hair braiding. The Chair called upon the bill sponsor Rep. Parmon to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Bryant was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 3*)

House Bill 396–A BILL TO BE ENTITLED: an act to increase the income eligibility limit for the homestead exclusion to thirty-five thousand dollars. The Chair called upon the bill sponsor Rep. Hilton to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tillis was recognized for a motion to report the bill without prejudice. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 4*)

House Bill 557–A BILL TO BE ENTITLED: an act to enact the future Volunteer firefighters & rescue squad members act of North Carolina. The Chair called upon the bill sponsor Rep. Folwell to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Hilton was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 5)*

House Bill 583–A BILL TO BE ENTITLED: an act to clarify that an adequate state remedy is provided in actions against local school boards only when sovereign immunity is waived. This bill was pulled by request of the bill sponsor Rep. Glazier. The Bill is attached. (*Attachment 6*)

House Bill 472–A BILL TO BE ENTITLED: an act to provide for the fair and reliable imposition of capital sentences. The Chair called upon the bill sponsor Rep. Womble to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. The Chairman, Committee and bill sponsor thought the bill needed adjustment and was sent to a sub-committee. Chairman Faison appointed Rep. Haire as Chair, as well as Rep. Bryant and Alexander to serve on the committee. The Bill, Bill Analysis and Sponsor handouts are attached. (*Attachment 7*)

With no further time left for business to come before the committee Chairman Faison announced the adjournment of the meeting with hopes that Speaker Jane Patterson, Executive Director, E-NC Authority would return in following weeks to do her presentation. The meeting adjourned at 1:51 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, March 25, 2009
1:00PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	HB 291	Hair Braider Licensure/Cosmetic Art Act.	Representative Parmon
2.	HB 396	Raise Income Limit for Homestead Exclusion.	Representative Hilton
3.	HB 472	North Carolina Racial Justice Act.	Representative Womble
4.	HB 557	Future Volunteer Firefighters Act.	Representative Folwell
5.	HB 583	Clarify Local School Board Sovereign Immunity.	Representative Glazier

4. **Speaker Subject – Take Rate and Citizen Surveys**
   Jane Patterson (Executive Director, E-NC Authority)

5. **Adjourn**

VISITOR REGISTRATION SHEET

Ways + Means – Broad band 3-25-09

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Joyce	NCASA
EMILY DOYLE	NCPAPA
Bill Voight	Verizon
Mark Deason	AT&T
[illegible]	TWC
BRUCE [illegible]	TWC
Angie Bailey	The e-NC Authority
Jane Patterson	The e-NC Authority
Val J. Russ	NAACP
Rayford McArthur	NAACP
Matthew Nichols	EQUMAC
Paula McCoy	NC Min Support Ctr / Faith Seeds Durham / 4- Seasons Co-op

VISITOR REGISTRATION SHEET

25 March 01

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kelly Braam	NC Board of Barbers
Anthony Allison	NCAE
[illegible]	CJPL
Susan Lupton	Center for Responsible Lending
[illegible]	CJPL
Kyle Hunter	LSPL
Jim Woodall	District Atty 13B
Tim Bradley	NC DOI
Brian Lew.	AARP
Tiffany Jones	Rep Womble
Doris Weaver	CWA
KEVIN LIGHTY	NC NAACP

VISITOR REGISTRATION SHEET

25 March 09

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert Sepe	Action Audits
Lee Rupert	CYPC
Rob Wilkie	N.C. Tobacco Alliance
Jennifer Haigwood	NCDOL
Art Brett	NCDOL
John Hoomani	NCDOL
David McGowan	NC Realtors
Tom Lacy	RJR PARTNER
Art Brett	NCDOL
Annaliese Dolph	DRNC
Sarah Preston	ACLU-NC

VISITOR REGISTRATION SHEET

Name of Committee	Date
	25 March 09

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pam Melton	Embarq
Charmaine Fuller	CSPC
Alicia Davis	MWC
Marijke McCandless	GigaBeam
Emilie Haertsch	PFAPP
Amanda Lattarzio	PFADP
Steve Dear	PFADP
Scott Bass	Nazareth House
Paul Mayer	NCCM
Paul Pulley	NCAJ
Willa Dickens	NCCCS

VISITOR REGISTRATION SHEET

25 March 09

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hannah Beverly	NAACP
Tawah Callahan-Godfrey	NCCM
Jeanne Tedrow	Passage Home
Susan Perry Cole	NC Assoc. of CCDs
T. Anthony Spearman	NAACP; AME Zion Church
Hope Mamsco	NC Justice Center, Raleigh
Terry Sako	NAACP Greene Co
Delvecchio Swinson	NAACP Greene Co.
Montravius Hunt	NAACP Greene Co
Anthony M. Hunt	NAACP Cumberland Co.
Nicole Dozier	NC Justice Center
Eugene W. Taylor	NAACP

VISITOR REGISTRATION SHEET

Name of Committee: _____ Date: march 25 '09

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Malloy	NC NAACP
Kirk Rivers	NC NAACP
Rev. Gene Troy, Jr.	
Kiana Rivers	NC NAACP
Keith Rivers	NC NAACP
LeRoy Sutton	Newark
Harold G. Troy Sr.	Whiteville City Council
Raequel Williams	Rep. Hall
Christopher Hill	ACLU Capital Punishment Project
Michelle Laws	NAACP
Bennett M. Taylor	N.A.A.C.P.
Melvin J. Montford	NCAPRI

HOUSE BILL 291

Short Title:	Hair Braider Licensure/Cosmetic Art Act.	(Public)
Sponsors:	Representatives Parmon, Womble (Primary Sponsors); Cotham and E. Floyd.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Finance.	

February 25, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE COSMETIC ART ACT TO PROVIDE FOR LICENSURE OF PERSONS ENGAGING IN THE PRACTICE OF NATURAL HAIR BRAIDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 88B-2 reads as rewritten:

"**§ 88B-2. Definitions.**

The following definitions apply in this Chapter:

(1) Apprentice. – A person who is not a manager or operator and who is engaged in learning the practice of cosmetic art under the direction and supervision of a cosmetologist.

(2) Board. – The North Carolina Board of Cosmetic Art Examiners.

(3) Booth. – A workstation located within a licensed cosmetic art shop that is operated primarily by one individual in performing cosmetic art services for consumers.

(4) Booth renter. – A person who rents a booth in a cosmetic art shop.

(4a) Braiding teacher. – An individual licensed by the Board to teach hair braiding.

(5) Cosmetic art. – All or any part or combination of cosmetology, esthetics, hair braiding, or manicuring, including the systematic manipulation with the hands or mechanical apparatus of the scalp, face, neck, shoulders, hands, and feet. Practices included within this subdivision shall not include the practice of massage or bodywork therapy as set forth in Article 36 of Chapter 90 of the General Statutes.

(6) Cosmetic art school. – Any building or part thereof where cosmetic art is taught.

(7) Cosmetic art shop. – Any building or part thereof where cosmetic art is practiced for pay or reward, whether direct or indirect.

(8) Cosmetologist. – Any individual who is licensed to practice all parts of cosmetic art.

(8a) Cosmetology. – The act of arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work upon the hair of a person by any means, including the use of hands, mechanical or electrical apparatus, or appliances or by use of cosmetic or chemical preparations or antiseptics.

(9) Cosmetology teacher. – An individual licensed by the Board to teach all parts of cosmetic art.

(10) Esthetician. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes skin care.

(11) Esthetician teacher. – An individual licensed by the Board to teach only that part of cosmetic art that constitutes skin care.

(11a) Esthetics. – Refers to any of the following practices: giving facials; applying makeup; performing skin care; removing superfluous hair from the body of a person by use of creams, tweezers, or waxing; applying eyelashes to a person, including the application of eyelash extensions, brow or lash color; beautifying the face, neck, arms, or upper part of the human body by use of cosmetic preparations, antiseptics, tonics, lotions, or creams; surface manipulation in relation to skin care; or cleaning or stimulating the face, neck, ears, arms, hands, bust, torso, legs, or feet of a person by means of hands, devices, apparatus, or appliances along with the use of cosmetic preparations, antiseptics, tonics, lotions, or creams.

(11b) Hair braider. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes hair braiding.

(12) Manicuring. – The care and treatment of the fingernails, toenails, cuticles on fingernails and toenails, and the hands and feet, including the decoration of the fingernails and the application of nail extensions and artificial nails. The term "manicuring" shall not include the treatment of pathologic conditions.

(13) Manicurist. – An individual licensed by the Board to practice only that part of cosmetic art that constitutes manicuring.

(14) Manicurist teacher. – An individual licensed by the Board to teach manicuring.

(14a) Hair braiding. – A service that results in tension on hair strands or roots by twisting, wrapping, extending, weaving, or locking hair by hand or mechanical device. For purposes of this definition, the phrase 'hair braiding' shall include the use of artificial or natural hair.

(15) Shampooing. – The application and removal of commonly used, room temperature, liquid hair cleaning and hair conditioning products. Shampooing does not include the arranging, dressing, waving, coloring, or other treatment of the hair."

SECTION 2. Chapter 88B of the General Statutes is amended by adding a new section to read:

"**§ 88B-10.1. Qualifications for licensing hair braiders.**

The Board shall issue a license to practice as a hair braider to any individual who meets all of the following requirements:

(1) Successful completion of at least 300 hours of a hair braider curriculum in an approved cosmetic art school.

(2) Passage of an examination conducted by the Board.

(3) Payment of the fees required by G.S. 88B-20."

SECTION 3. G.S. 88B-11 is amended by adding a new subsection to read:

"(e) The Board shall issue a license to practice as a hair braiding teacher to any individual who meets the requirements of subsection (a) of this section and who meets all of the following:

(1) Holds in good standing a hair braiding license issued by the Board.

(2) Submits proof of either practice as a hair braider in a cosmetic art shop or any Board-approved employment capacity in the cosmetic art industry for a period equivalent to two years of full-time work immediately prior to application or successful completion of at least 320 hours of a hair braider teacher curriculum in an approved cosmetic art school."

SECTION 4. G.S. 88B-12 reads as rewritten:

"**§ 88B-12. Temporary employment permit; extensions; limits on practice.**

(a) The Board shall issue a temporary employment permit to an applicant for licensure as an apprentice, cosmetologist, esthetician, hair braider, or manicurist who meets all of the following:

(1) Has completed the required hours of a cosmetic art school curriculum in the area in which the applicant wishes to be licensed.

(2) Has applied to take the examination within three months of completing the required hours.

(3) Is qualified to take the examination.

(b) A temporary employment permit shall expire six months from the date of graduation from a cosmetic art school and shall not be renewed.

(c) The holder of a temporary employment permit may practice cosmetic art only under the supervision of a licensed cosmetologist, manicurist, hair braider, or esthetician, as appropriate, and may not operate a cosmetic art shop."

SECTION 5. G.S. 88B-13 reads as rewritten:

"**§ 88B-13. Applicants licensed in other states.**

(a) The Board shall issue a license to an applicant licensed as an apprentice, cosmetologist, esthetician, hair braider, or manicurist in another state if the applicant shows:

(1) The applicant is an active practitioner in good standing.

(2) The applicant has practiced at least one of the three years immediately preceding the application for a license.

(3) There is no disciplinary proceeding or unresolved complaint pending against the applicant at the time a license is to be issued by this State.

(4) The licensure requirements in the state in which the applicant is licensed are substantially equivalent to those required by this State.

(b) Instead of meeting the requirements in subsection (a) of this section, any applicant who is licensed as a cosmetologist, esthetician, hair braider, or manicurist in another state shall be admitted to practice in this State under the same reciprocity or comity provisions that the state in which the applicant is licensed grants to persons licensed in this State.

(c) The Board may establish standards for issuing a license to an applicant who is licensed as a teacher in another state. These standards shall include a requirement that the licensure requirements in the state in which the teacher is licensed shall be substantially equivalent to those required in this State and that the applicant shall be licensed by the Board to practice in the area in which the applicant is licensed to teach."

SECTION 6. G.S. 88B-14(b) reads as rewritten:

"(b) The applicant shall list all ~~licensed cosmetologists~~licensees who practice cosmetic art in the shop and shall identify each as an employee or a booth renter."

SECTION 7. G.S. 88B-18 reads as rewritten:

"**§ 88B-18. Examinations.**

(a) Repealed by Session Laws 2006-212, s. 2, effective August 8, 2006.

(b) Each examination shall have both a practical and a written portion.

(c) Examinations for applicants for apprentice, cosmetologist, teacher, esthetician, hair braider, and manicurist licenses shall be given in at least three locations in the State that are geographically scattered. The examinations shall be administered in Board-approved facilities.

(d) An applicant for a cosmetologist, esthetician, manicurist, hair braider, or teacher's license who fails to pass the examination three times may not reapply to take the examination again until after the applicant has successfully completed any additional requirements prescribed by the Board."

SECTION 8. G.S. 88B-20 reads as rewritten:

"**§ 88B-20. Fees required.**

(a) The Board may charge the applicant the actual cost of preparation, administration, and grading of examinations for cosmetologists, apprentices, manicurists, estheticians, hair braiders, or teachers, in addition to its other fees.

(b) The Board may charge application fees as follows:

(1) Inspection of a newly established cosmetic art shop ..... $ 25.00

(2) Reciprocity applicant under G.S. 88B-13 ..... $ 15.00.

(c) The Board may charge license fees as follows:

(1) Cosmetologist ..... $ 39.00 every 3 years

(2) Apprentice ..... $ 10.00 per year

(3) Esthetician ..... $ 10.00 per year

(4) Manicurist ..... $ 10.00 per year

(4a) Hair braider ..... $ 10.00 per year

(5) Teacher ..... $ 10.00 every 2 years

(6) Cosmetic art shop per active booth ..... $ 3.00 per year

(7) Cosmetic art school ..... $ 50.00 per year

(8) Duplicate license ..... $ 1.00.

(d) The Board may require payment of late fees and reinstatement fees as follows:

(1) Apprentice, cosmetologist, esthetician, manicurist, hair braider, and teacher late renewal ..... $ 10.00

(2) Cosmetic art schools and shops late renewal ..... $ 10.00

(3) Reinstatement – cosmetic art schools and shops ..... $ 25.00.

(e) The Board may prorate fees as appropriate."

SECTION 9. G.S. 88B-21 reads as rewritten:

"**§ 88B-21. Renewals; expired licenses; inactive status.**

(a) Each license to operate a cosmetic art shop shall be renewed on or before the first day of February of each year. As provided in G.S. 88B-20, a late fee shall be charged for licenses renewed after February 1. Any license not renewed by March 1 of each year shall expire. A cosmetic art shop whose license has been expired for one year or less shall have the license reinstated immediately upon payment of the reinstatement fee, the late fee, and all unpaid license fees. The licensee shall submit to the Board, as a part of the renewal process, a list of all licensed cosmetologists who practice cosmetic art in the shop and shall identify each as an employee or a booth renter.

(b) Cosmetologist licenses shall be renewed on or before October 1 every three years beginning October 1, 1998. A late fee shall be charged for renewals after that date. Any license not renewed shall expire on October 1 of the year that renewal is required. The Board may develop and implement a plan for staggered license renewal and may prorate license fees to implement such a plan.

(c) Apprentice, esthetician, hair braider, and manicurist licenses shall be renewed annually on or before October 1 of each year. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(d) Teacher licenses shall be renewed every two years on or before October 1. A late fee shall be charged for the renewal of licenses after that date. Any license not renewed shall expire on October 1 of that year.

(e) Prior to renewal of a license, a teacher, cosmetologist, esthetician, hair braider, or manicurist shall annually complete eight hours of Board-approved continuing education for each year of the licensing cycle. A cosmetologist may complete up to 24 hours of required continuing education at any time within the cosmetologist's three-year licensing cycle. Licensees shall submit written documentation to the Board showing that they have satisfied the requirements of this subsection. A licensee who is in active practice as a cosmetologist, esthetician, hair braider, or manicurist, has practiced for at least 10 consecutive years in that ~~profession~~ profession, and is 60 years of age or older does not have to meet the continuing

education requirements of this subsection. A licensee who is in active practice as a cosmetologist and has at least 20 consecutive years of experience as a cosmetologist, does not have to meet the continuing education requirements of this subsection, but shall report any continuing education classes completed to the Board, whether the continuing education classes are Board-approved or not. Promotion of products and systems shall be allowed at continuing education given in-house or at trade shows. Continuing education classes may also be offered in secondary languages as needed. No member of the Board may offer continuing education courses as required by this section.

(f) If an apprentice, cosmetologist, esthetician, manicurist, hair braider, or teacher fails to renew his or her license within five years following the expiration date, the licensee shall be required to pass an examination as prescribed by the Board before the license will be reinstated.

(g) Cosmetic art school licenses shall be renewed on or before October 1 of each year. A late fee shall be charged for licenses renewed after that date. Any license not renewed by November 1 of that year shall expire. A cosmetic art school whose license has been expired for one year or less shall have its license reinstated upon payment of the reinstatement fee, the late fee, and all unpaid license fees.

(h) Upon request by a licensee for inactive status, the Board may place the licensee's name on the inactive list so long as the licensee is in good standing with the Board. An inactive licensee is not required to complete continuing education requirements. An inactive licensee shall not practice cosmetic art for consideration. However, the inactive licensee may continue to purchase supplies as accorded an active licensee. When the inactive licensee desires to be removed from the inactive list and return to active practice, the inactive licensee shall notify the Board of his or her desire to return to active status and pay the required fee as determined by the Board. As a condition of returning to active status, the Board may require the licensee to complete eight to 24 hours of continuing education pursuant to subsection (e) of this section."

SECTION 10. G.S. 88B-22 reads as rewritten:

"**§ 88B-22. Licenses required; criminal penalty.**

(a) Except as provided in this Chapter, no person may practice or attempt to practice cosmetic art for pay or reward in any form, either directly or indirectly, without being licensed as an apprentice, cosmetologist, esthetician, hair braider, or manicurist by the Board.

(b) Except as provided in this Chapter, no person may practice cosmetic art or any part of cosmetic art, for pay or reward in any form, either directly or indirectly, outside of a licensed cosmetic art shop.

(c) No person may open or operate a cosmetic art shop in this State unless a license has been issued by the Board for that shop.

(d) An individual licensed as an ~~esthetician~~ esthetician, hair braider, or manicurist may practice only that part of cosmetic art for which the individual is licensed.

(d1) No person may teach cosmetic art in a Board-approved cosmetic art school unless the person is a teacher licensed under this Chapter. A guest lecturer may be exempt from the requirements of this subsection upon approval by the Board.

(e) An apprentice licensed under the provisions of this Chapter shall apprentice under the direct supervision of a cosmetologist. An apprentice shall not operate a cosmetic art shop.

(f) A violation of this Chapter is a Class 3 misdemeanor."

SECTION 11. G.S. 88B-23(a) reads as rewritten:

"(a) Every apprentice, cosmetologist, esthetician, manicurist, hair braider, and teacher licensed under this Chapter shall display the certificate of license issued by the Board within the shop in which the person works."

SECTION 12. G.S. 88B-24(9) reads as rewritten:

"**§ 88B-24. Revocation of licenses and other disciplinary measures.**

The Board may restrict, suspend, revoke, or refuse to issue, renew, or reinstate any license for any of the following:

...

(9) Violation of G.S. 86A-15 by a cosmetologist, esthetician, hair braider, or manicurist licensed by the Board and practicing cosmetic art in a barber shop."

SECTION 13. Any hair braider who submits proof to the Board that the hair braider is actively engaged in the practice of hair braiding on the effective date of this act, passes an examination conducted by the Board, and pays the required fee under G.S. 88B-20 shall be licensed without having to satisfy the requirements of G.S. 88B-10.1, enacted by Section 2 of this act. A cosmetic art shop that practices hair braiding only and that submits proof to the Board that the shop is actively engaged in the practice of hair braiding on the effective date of this act shall have one year from the date of this act to comply with the requirements of G.S. 88B-14. All persons who do not make application to the Board within one year of the effective date of this act shall be required to complete all training and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B of the General Statutes.

SECTION 14. This act becomes effective October 1, 2009, and applies to acts occurring on or after that date.

HOUSE BILL 291:
Hair Braider Licensure/Cosmetic Art Act

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Finance	**Date:**	March 10, 2009
Introduced by:	Reps. Parmon, Womble	**Prepared by:**	Brenda J. Carter
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 291 would require that persons engaging in the practice of hair braiding be licensed by the NC Board of Cosmetic Art Examiners.

CURRENT LAW: The North Carolina Cosmetic Art Act, which sets out the qualifications for licensing cosmetologists, estheticians, and manicurists, is found in Chapter 88B of the General Statutes. The Board of Cosmetic Art Examiners (Board) is responsible for examining and determining the qualifications and fitness of applicants for licensure, and has the power to issue, renew, deny, restrict, suspend, or revoke licenses. The NC Administrative Code sets out the following definition of "natural hair braiding" as it pertains to the Board of Cosmetic Art Examiners (21 NCAC 14A.0101):

> "'Natural hair braiding' is a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, is *not subject to regulation pursuant to G.S. 88B*, provided that the service does not include hair cutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair."

BILL ANALYSIS: House Bill 291 would amend the Cosmetic Art Act to require the licensure of persons engaged in the practice of hair braiding. **Section 1** of the bill defines hair braiding and includes it within the definition of cosmetic art. Including hair braiding within the definition of cosmetic art means that the activity would be regulated by the Board, and that hair braiding shops would have to comply with the same requirements that apply to all other cosmetic art shops – including licensing and sanitation requirements. "Hair braiding" is defined as a service that results in tension on hair strands or roots by twisting, wrapping, extending, weaving, or locking hair by hand or mechanical device -- including the use of artificial or natural hair.

Section 2 of the bill sets out the qualifications for licensing hair braiders. A hair braider license would require successful completion of at least 300 hours of a hair braider curriculum in an approved cosmetic art school, passage of an examination conducted by the Board, and payment of a $10 license fee and other applicable fees. **Section 3** of the bill sets out the licensing requirements for hair braiding teachers. A hair braiding teacher must hold a hair braiding license, and must submit proof of either (1) practice as a hair braider for a period equivalent to two years of full-time work immediately prior to the time of the application, or (2) successful completion of at least 320 hours of a hair braider teacher curriculum in an approved cosmetic art school.

Sections 4 through 12 of the bill amend the existing laws concerning cosmetic art licensees to include hair braiders; ***the $10 license fee for hair braiders is set out in Section 8 of the bill.*** As with other professions that must be licensed by the Board, ***practicing hair braiding without a license would be a Class 3 misdemeanor.*** A Class 3 misdemeanor, assuming the person has no prior convictions, is punishable by 1-10 days of community punishment and/or a fine up to $200.

Section 13 of the bill provides an exemption from the education requirement for any hair braider who submits proof to the Board that he or she is actively engaged in the practice of hair braiding on the effective date of the bill; however, the person must pass an examination and pay the required licensing

fee. The bill also provides a one-year grace period for a hair braiding shop to comply with licensing requirements for cosmetic art shops, if the shop submits proof that it is actively engaged in the practice of hair braiding on the effective date of the bill. All persons who do not apply to the Board within one year of the effective date of the bill would be required to complete all training and examination requirements, and to otherwise comply with the provisions of Chapter 88B of the General Statutes.

EFFECTIVE DATE: The bill would become effective October 1, 2009 and apply to acts occurring on or after that date.

BACKGROUND: A 2008 report prepared by the Colorado Department of Regulatory Agencies indicates that although all 50 states regulate barbers and cosmetologists, regulation of hair braiders/natural hairstylists in other states is widely divergent. Following are the different ways states address this issue.

Hair braiding/natural hairstyling not addressed in statute. In the most common scenario, evident in 23 states, the law is silent on the issue of hair braiding/natural hairstyling. These practices are neither included in the definitions of cosmetology or hairstyling, nor are they specifically excluded. In practical terms, this means that state cosmetology boards deal with this issue on a case-by-case basis. These states include Alabama, Alaska, Arkansas, Delaware, Hawaii, Idaho, Indiana, Kentucky, Maine, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Rhode Island, Utah, Vermont, Washington, West Virginia and Wisconsin.

Cosmetologist/hairstylist license specifically required. In Colorado and six other states, current law requires individuals to obtain a cosmetology or hairstyling license to practice hair braiding/natural hairstyling. These states include Illinois, Iowa, Missouri, Oregon, South Dakota and Wyoming.

Qualified exemption. Three states—Kansas, Minnesota, and Mississippi—essentially exempt hair braiders/natural hairstylists from the barber/cosmetology law on the condition that applicants complete a health and sanitation course or complete a self-test demonstrating an understanding of correct sanitation practices.

Specialized hair braiding/natural hairstyling license required. Eleven jurisdictions have a specialized hair braiding/natural hairstyling license, including the District of Columbia, Florida, Louisiana, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas and Virginia.

Exemption. Arizona, California, Connecticut, Georgia, Maryland, Michigan, and North Carolina exempt hair braiders/natural hairstylists from the barber/cosmetology law. Michigan does issue a natural hair culturist license, but such license is optional, not required.

The Colorado report indicates that the requirements of these licensing programs vary widely. For example, Louisiana requires applicants to complete a total of 1,000 hours in training to qualify for an alternative hair design permit, while Texas requires just 35 hours of training to qualify for a hair braiding specialty certificate of registration. Ohio requires 450 hours of training. The scope of practice permitted by the various specialty licenses also varies. In both Florida and South Carolina, the use of extensions and wefts are excluded from the practice of hair braiders. Because use of extensions and wefts is widespread among hair braiders/natural hairstylists, this limitation effectively compels individuals wishing to provide these services to seek a traditional barber or cosmetologist license.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 291 A BILL TO BE ENTITLED AN ACT AMENDING THE COSMETIC ART ACT TO PROVIDE FOR LICENSURE OF PERSONS ENGAGING IN THE PRACTICE OF NATURAL HAIR BRAIDING.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 396

Short Title:	Raise Income Limit for Homestead Exclusion.	(Public)
Sponsors:	Representatives Hilton, Setzer, R. Warren, Steen (Primary Sponsors); Barnhart, Blackwood, Blust, Burris-Floyd, Cleveland, Coates, Current, Dockham, Frye, Gillespie, Grady, Howard, Hurley, Johnson, McGee, Spear, Starnes, and Wiley.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Finance.	

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE INCOME ELIGIBILITY LIMIT FOR THE HOMESTEAD EXCLUSION TO THIRTY-FIVE THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-277.1(a2) reads as rewritten:

"(a2) Income Eligibility Limit. – For the taxable year beginning on July 1, ~~2008,~~2009, the income eligibility limit is ~~twenty-five thousand dollars ($25,000).~~thirty-five thousand dollars ($35,000). For taxable years beginning on or after July 1, ~~2009,~~2010, the income eligibility limit is the amount for the preceding year, adjusted by the same percentage of this amount as the percentage of any cost-of-living adjustment made to the benefits under Titles II and XVI of the Social Security Act for the preceding calendar year, rounded to the nearest one hundred dollars ($100.00). On or before July 1 of each year, the Department of Revenue must determine the income eligibility amount to be in effect for the taxable year beginning the following July 1 and must notify the assessor of each county of the amount to be in effect for that taxable year."

SECTION 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2009.

HOUSE BILL 396:
Raise Income Limit for Homestead Exclusion

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Finance	**Date:**	March 25, 2009
Introduced by:	Reps. Hilton, Setzer, R. Warren, Steen	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 396 would increase the income eligibility limit for the property tax homestead exclusion from $25,600 to $35,000 for the taxable year beginning July 1, 2009.***

CURRENT LAW: North Carolina excludes from property taxes a portion of the appraised value of a permanent residence owned and occupied by North Carolina residents who are at least 65 years of age or are totally and permanently disabled, and whose income does not exceed $25,600. The amount of the appraised value of the residence that may be excluded from taxation is the greater of twenty-five thousand dollars ($25,000) or fifty percent (50%) of the appraised value of the residence. Income means all moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. An otherwise qualifying owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

BILL ANALYSIS: House Bill 396 would increase the income eligibility limit for the property tax homestead exclusion from $25,600 to $35,000 for the taxable year beginning July 1, 2009. For taxable years beginning on or after July 1, 2010, the eligibility limit would the amount for the previous year, adjusted by the same percentage of that amount as the percentage of any social security cost-of-living adjustments for the previous year, rounded to the nearest one hundred dollars.

EFFECTIVE DATE: The bill would be effective for taxes imposed for taxable years beginning on or after July 1, 2009.

H396-SMRV-19(e1) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 396 A BILL TO BE ENTITLED AN ACT TO INCREASE THE INCOME ELIGIBILITY LIMIT FOR THE HOMESTEAD EXCLUSION TO THIRTY-FIVE THOUSAND DOLLARS.

☒ Without prejudice and recommendation that the bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 557

Short Title:	Future Volunteer Firefighters Act.	(Public)
Sponsors:	Representatives Folwell, Pierce, Guice, Stevens (Primary Sponsors); Brown, Faison, Harrison, Holloway, Lewis, and Moore.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary I.	

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO ENACT THE FUTURE VOLUNTEER FIREFIGHTERS & RESCUE SQUAD MEMBERS ACT OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Future Volunteer Fighters & Rescue Squad Members Act of North Carolina."

SECTION 2. G.S. 95-25.5 is amended by adding a new subsection to read:

"(n) Nothing in this section prohibits qualified youths under 18 years of age from participating in training through their fire department, the Office of State Fire Marshal, or the Department of Community Colleges. As used in this subsection, the term 'qualified youth under 18 years of age' means an uncompensated fire department or rescue squad member who is over the age of 15 and under the age of 18 and who is a member of a bona fide fire department, as that term is defined in G.S. 58-86-25, or of a rescue squad described in G.S. 58-86-30."

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

HOUSE BILL 557:
Future Volunteer Firefighters Act

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	March 25, 2009
Introduced by:	Reps. Folwell, Pierce, Guice, Stevens	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 557 enacts the Future Volunteer Firefighters & Rescue Squad Members Act of North Carolina.

BILL ANALYSIS: House Bill 557 clarifies that nothing in the youth employment statutes prohibits "qualified youth under 18 years of age" from participating in training through their fire department, the Office of State Fire Marshal, or the Department of Community Colleges.

The term "qualified youth under 18 years of age" means an uncompensated fire department or rescue squad member who is over the age of 15 and under the age of 18 and who is a member of a bona fide fire department, as that term is defined in G.S. 58-86-25, or of a rescue squad described in G.S. 58-86-30.

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 557 A BILL TO BE ENTITLED AN ACT TO ENACT THE FUTURE VOLUNTEER FIREFIGHTERS & RESCUE SQUAD MEMBERS ACT OF NORTH CAROLINA.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 583

Short Title:	Clarify Local School Board Sovereign Immunity.	(Public)
Sponsors:	Representatives Glazier, Ross, Blue, Weiss (Primary Sponsors); M. Alexander, Bell, Harrison, and Lucas.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary II.	

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT AN ADEQUATE STATE REMEDY IS PROVIDED IN ACTIONS AGAINST LOCAL SCHOOL BOARDS ONLY WHEN SOVEREIGN IMMUNITY IS WAIVED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-42 reads as rewritten:

"**§ 115C-42. Liability insurance and immunity.**

Any local board of education, by securing liability insurance as hereinafter provided, is hereby authorized and empowered to waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent or employee of such board of education when acting within the scope of his authority or within the course of his employment. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but such immunity is waived only to the extent that said board of education is indemnified by insurance for such negligence or tort. The obtaining of insurance by a local board of education and resulting waiver of governmental immunity shall provide an adequate remedy at law only with respect to claims of damage to which a court of this State finds the waiver of immunity applies.

...."

SECTION 2. This act is effective when it becomes law, and applies to claims for damages against local boards of education filed on or after that date.

HOUSE BILL 472*

Short Title:	North Carolina Racial Justice Act.	(Public)
Sponsors:	Representatives Womble, Parmon, Luebke, Harrison (Primary Sponsors); Adams, K. Alexander, M. Alexander, Allen, Bell, Blue, Bordsen, Bryant, Carney, Coates, Cotham, Dickson, Earle, England, Faison, Farmer-Butterfield, Fisher, E. Floyd, Glazier, Hall, Harrell, Hughes, Insko, Jeffus, Jones, Lucas, Mackey, Martin, Michaux, Mobley, Pierce, Ross, Tarleton, Wainwright, Weiss, Wilkins, and Wray.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary I.	

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE FAIR AND RELIABLE IMPOSITION OF CAPITAL SENTENCES.

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 101.

"North Carolina Racial Justice Act.

"**§ 15A-2010. North Carolina Racial Justice Act.**

No person shall be subject to or given a sentence of death, or shall be executed pursuant to any judgment that was sought or obtained on the basis of race.

"**§ 15A-2011. Proof of racial discrimination.**

(a) A finding that race was the basis of the decision to seek or impose a death sentence may be established if the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large at the time the death sentence was sought or imposed.

(b) Evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large at the time the death sentence was sought or imposed may include statistical evidence or other evidence, including, but not limited to, sworn testimony of attorneys, prosecutors, law enforcement officers, jurors, or other members of the criminal justice system or both, that irrespective of statutory factors, death sentences were sought or imposed significantly more frequently:

(1) Upon persons of one race than upon persons of another race, or as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race, or that race was a significant factor in decisions to exercise peremptory challenges during jury selection; and

(2) That the State is unable to justify the racial disparities demonstrated by the defendant by identifying other, legitimate sentencing considerations that when tested statistically, adequately explain the apparent racial disparities.

(c) The defendant has the burden of proving that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large at the time the death sentence was sought or imposed. The State may offer evidence in rebuttal of the claims or evidence of the defendant. The State may rebut a statistical showing of statewide racial disparities by introducing statistical evidence or other evidence demonstrating that no racial discrimination occurred in the county or the prosecutorial district at the time the death penalty was sought or imposed. The court may consider evidence of any program, implemented prior to the defendant's trial for the purpose of eliminating racial disparities, in its evaluation of whether the State has adequately addressed those disparities.

"**§ 15A-2012. Hearing procedure.**

(a) The defendant shall state with particularity how the evidence supports a claim that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large at the time the death sentence was sought or imposed. The claim shall be raised by the defendant at the pretrial conference or in postconviction proceedings. The court shall schedule a hearing on the claim and shall prescribe a time for the submission of evidence by both parties. If the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large at the time the death sentence was sought or imposed, the court shall order that a death sentence shall not be sought, or that the death sentence imposed by the judgment shall be vacated and the defendant resentenced to life imprisonment without the possibility of parole.

(b) Notwithstanding any other provision or time limitation contained in Article 89 of Chapter 15A of the General Statutes, a defendant may seek relief from the defendant's death sentence upon the ground that racial considerations played a significant part in the decision to seek or impose a death sentence by filing a motion seeking relief. The motion shall be filed within one year of the effective date of this act.

Except as specifically stated in subsections (a) and (b) of this section, the procedures and hearing on the motion seeking relief from a death sentence upon the ground that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large at the time the death sentence was sought or imposed, shall follow and comply with G.S. 15A-1420, 15A-1421, and 15A-1422."

SECTION 2. This act is effective when it becomes law and applies retroactively.

HOUSE BILL 472:
North Carolina Racial Justice Act

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	March 24, 2009
Introduced by:	Reps. Womble, Parmon, Luebke, Harrison	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 472 would provide a process by which statistical evidence could be used to establish that race was the basis for seeking or obtaining the death penalty.

BACKGROUND AND CURRENT LAW: In 1987, the United States Supreme Court decided the case of *McCleskey v. Kemp*. In that case, a black male defendant was convicted of two counts of armed robbery and murder in the state of Georgia. The victim was a white male. McCleskey sought relief from his death sentence on the basis that the Georgia sentencing process was administered in a racially discriminatory manner in violation of the Equal Protection Clause of the United States Constitution. McCleskey supported his claim with a statistical study indicating that the death penalty in Georgia was imposed more often on black defendants and killers of white victims than on white defendants and killers of black victims. McCleskey argued that the study indicated that black defendants who killed white victims had the greatest likelihood of receiving the death penalty. In an opinion authored by Justice Lewis Powell, the majority rejected McCleskey's claims, stating that the study failed to establish that any of the decision makers in McCleskey's specific case acted with discriminatory purpose in violation of the Equal Protection Clause.[1]

Under McCleskey, to prevail on a claim that the administration of the capital punishment system violates the Equal Protection Clause, the petitioner must prove that the decision makers in the petitioner's specific case acted with discriminatory purpose and statistical information about the general administration of the capital punishment system is insufficient to support an inference that any of the decision makers in the case acted with discriminatory purpose.

In response to the McCleskey decision, Congress and several state legislatures, including the North Carolina General Assembly, considered versions of the Racial Justice Act. In 1998, Kentucky became the first state to enact the Racial Justice Act. The North Carolina General Assembly last considered a similar Racial Justice Act during the 2007 Regular Session (House Bill 1291: Racial Justice Act), but did not enact it.

BILL ANALYSIS: House Bill 472, the North Carolina Racial Justice Act, provides a process by which statistical evidence could be used to establish that race was the basis for seeking or obtaining the death penalty.

Pretrial Procedure:

House Bill 472 provides that a finding that race was the basis of the decision to seek or impose the death penalty may be established if the court finds that race was a significant factor in decisions to seek or impose the death penalty in the county, the prosecutorial district, or the State at large, at the time the death penalty was sought or imposed. Evidence relevant to establish a finding that race was a significant factor may include statistical or other evidence, including sworn testimony of members of the criminal justice system that (1) the death penalty was sought or imposed significantly more frequently for persons

[1] Excerpted from Race and the Death Penalty after McCleskey: A Case Study of Kentucky's Racial Justice Act, Washington and Lee Journal of Civil Rights and Social Justice, Fall (2005).

of one race than for persons of another race or as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race, or that race was a significant factor in decisions to exercise peremptory challenges during jury selection, and (2) the State was not able to justify the racial disparities by identifying other legitimate sentencing considerations.

The defendant has the burden of proving that race was a significant factor in decisions to seek or impose the death penalty in the county, the prosecutorial district, or the State at large, at the time the death penalty was sought or imposed. The claim must be raised by the defendant at the pretrial conference or in postconviction proceedings, and the court must schedule a hearing on the claim and set a time for the submission of evidence by both parties. If the court finds that race was a significant factor, the court shall order that the death penalty not be sought or that a death sentence not be carried out and the defendant resentenced to life imprisonment without parole.

A defendant on death row would be allowed a period of one year from the effective date of the bill to file a motion seeking relief from his or her death sentence upon the ground that racial considerations played a significant part in the decision to seek or impose a death sentence. Except as otherwise provided in the bill, the existing provisions of the State's Criminal Procedure Act regarding procedures and hearing on motions for appropriate relief would apply, including the appointment of counsel for indigent defendants and review upon appeal.

EFFECTIVE DATE: House Bill 472 would become effective when it becomes law and would apply retroactively.

H472-SMRV-17(e1) v1

NC Racial Justice Act – SB 461 / HB 472

Bill Summary:

The North Carolina Racial Justice Act passed the NC House in May 2007. If passed this year, the bill will provide just another safety measure to ensure that the death penalty is applied without bias in regards to race in North Carolina.

The legislature has a responsibility to ensure that the death penalty is administered fairly, that sentences are given based on the aggravating and mitigating circumstances in individual cases, and that decisions by jurors and other court personnel are not made because of the race of the victim or the accused.

While the death penalty is currently stalled temporarily in North Carolina, this is the perfect time to make sensible reforms to increase fairness in the administration of our death penalty system.

Additional Points of Discussion:

- **Pre-Trial & Post Trial**
  The revised version of the Racial Justice Act combines and unifies the procedures for pre-trial and post-trial claims of racial bias. The previous bill was unclear on post-trial procedures. Now a defendant can raise a racial bias claim prior to a trial's beginning or during a post-conviction appeal.

- **More Evidence for Prosecutors**
  The revised version of the bill allows prosecutors to present evidence of programs that have been implemented to remedy and/or reduce the risk of racial bias. This measure was added to give prosecutors the same level of evidence during rebuttal that is given to defendants.

- **Defendants Must Prove Bias**
  In the revised version of the bill, defendants now must show that irrespective of statutory factors, death sentences were sought or imposed '*significantly*' more frequently by race of defendant or victim, not just more frequently.

- **The Relief if Bias is Proven = Life without Parole**
  Finally, the revised version of the Racial Justice Act ensures that if a defendant wins a post-trial claim of racial bias, that he is sentenced to life without parole. Previously, life without parole was implied but not stated specifically in the bill.

- **Support for the Bill**
  Senate attorneys Clodfelter, McKissick, Kinnaird, Doug Berger, and Nesbitt assisted with the redrafting of the Racial Justice Act in the Senate. The bill passed with bi-partisan support in the House last session.

NC Racial Justice Act

Comparison Chart: Differences between 2007 bill & 2009 bill

The 2007 bill – HB 1291	The 2009 bill – HB 472/SB 461
The 2007 bill divided procedural requirements of the bill between pretrial procedures (15A-2011) and posttrial procedures (15A-2012).	The 2009 bill, in contrast, applies the same substantive content to pretrial and posttrial cases.
Bars discrimination in pretrial cases "if the court finds that race was a significant factor in decisions to seek the sentence of death in the county, the prosecutorial district, or the State at large, at the time the death sentence was sought."	Bars discrimination in pretrial and posttrial cases "if the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large, at the time the death sentence was sought or imposed."
Bars discrimination in posttrial cases only "if the court finds that race was a significant factor in decisions to exercise peremptory challenges during jury selection."	
The defendant may present statistical evidence or other evidence to prove that "irrespective of statutory factors death sentences were sought more frequently" based on the race of the defendant or the race of the victim.	The defendant may present statistical evidence or other evidence to prove that "irrespective of statutory factors death sentences were sought or imposed significantly more frequently" based on the race of the defendant or the race of the victim or that race was a significant factor in decisions to exercise peremptory challenges during jury selection.
The prosecution may rebut the defendant's showing by "identifying other, legitimate considerations that when tested statistically, adequately explain the apparent racial disparities."	The prosecution may rebut the defendant's showing by "identifying other, legitimate sentencing considerations that when tested statistically, adequately explain the apparent racial disparities," or by "introducing statistical or other evidence demonstrating that no racial discrimination occurred in the county or prosecutorial district at the time the death penalty was sought or imposed." "The court may consider evidence of any program, implemented prior to the defendant's trial for the purpose of eliminating racial disparities, in its evaluation of whether the State has adequately addressed those disparities."

NC Racial Justice Act

Comparison Chart: Differences between 2007 bill & 2009 bill

The defendant has the burden of proof by "clear and convincing evidence"	The defendant has the burden of proof as in other comparable motions filed pursuant to G.S. 15A-1420
The remedy for a finding or race discrimination is that "a death sentence shall not be sought, or that the death sentence imposed by the judgment not be carried out."	The remedy for a finding or race discrimination is that "a death sentence shall not be sought, or that the death sentence imposed by the judgment shall be vacated and the defendant resentenced to life imprisonment without the possibility of parole."
	Pursuant to G.S. 15A-1421, Applies the provisions of Chapter 7A governing appointment of counsel for indigent defendants
	Applies provisions of G.S. 15A-1422 for appellate review.

Race and the Death Penalty

In North Carolina

An Empirical Analysis: 1993-1997

Initial Findings – April 16, 2001

Principal Investigator
Dr. Isaac Unah
Principal Collaborator
Professor John Charles Boger

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, April 1, 2009

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, April 1, 2009, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Lucy Allen, Angela Bryant, Mitch Gillespie, Phil Haire, Dewey Hill, Mark Hilton, Sarah Stevens, Joe Tolson, and Winkie Wilkins. Staff in attendance: Brenda Carter, Peter Capriglione and Susan Seitz. House Sergeant-at-Arms assisting: Marvin Lee, Bob Rossi and Judy Turner. House Pages: Justin Michael from Wake County sponsored by Representative Ross and Colby Gabel from Alamance County sponsored by Representative Bordsen. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. The following bills were placed before the Committee:

House Bill 676–A BILL TO BE ENTITLED: an act to institute traditional jurisdictional boundaries for law enforcement agencies in Iredell County. The Chair called upon the bill sponsor Rep. McCormick to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Coates was recognized for a motion to report the bill without prejudice. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. *(Attachment 3)*

House Bill 9–A BILL TO BE ENTITLED: an act to make it unlawful to use additional technology associated with a mobile phone while operating a vehicle on a public street or highway or public vehicular area. Rep. Tolson moved that the proposed committee substitute be before the committee. Hearing no objection, the Chair called upon the bill sponsor Rep. Pierce to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Bryant was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. *(Attachment 4)*

House Bill 581–A BILL TO BE ENTITLED: an act to extend the deadline for the Commissioners in a partition action to report back to the court on their proposed division of the land, and to extend the deadline for responding to a summons in a partition action from ten days to thirty days, as recommended by the Partition Sales

Study Committee. The Chair called upon the bill sponsor Rep. Bryant to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Stevens was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, Sponsor Handouts and Committee Report are attached. (*Attachment 5*)

With no time left for further business to come before the committee Chairman Faison announced the adjournment of the meeting and House Bills 136, 595, and 722 will be heard at our next meeting. The meeting adjourned at 1:50 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, April 1, 2009
1:00PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	HB 676	Law Enforcement Jurisdiction in Iredell Co.	Representative McCormick
2.	HB 9	No Texting While Driving	Representative Pierce
3.	HB 136	DOT/Fiber-Optic Cable.	Representative Faison
4.	HB 581	Partition Sales/Extend Report & Answer Times.	Representative Bryant
5.	HB 595	Study High-Speed Internet/Underserved Cities.	Representative Alexander
6.	HB 722	Regulate Sales of Glass Vials.	Representative Hilton

4. **Adjourn**

VISITOR REGISTRATION SHEET

Ways & Means — 4/1/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCRMA
Catherine Rice	Attorney
Tom Coley	CWA
Doris Weaver	CWA
Henry Jones	Attorney Raleigh
David Ramsey	Iredell Co SO, Statesville, NC
Rick Dowdle	" " "
Brad Phillips	TNC
Charles Pittman	C-NC
Karen Campbell	Iredell County Sheriff's Office
Martin Byer	IREDELL CO. SHERIFF'S OFFICE
Matt Deaton	AT&T

VISITOR REGISTRATION SHEET

Ways & Means — 4-1-09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Anderson	Statesville Police
Robert Hites	City of Statesville
Ellis Powell	NCDOT
Johanna Reese	DOT
Mariah West	AOC
Sammy Roberson	TWC
David Bonar	MWL
Allison Cooper	RRW Attorneys, P.A.
Paul Taylor	Jordan
Marcus Trathen	BMT&C
Marty Bocock	Embarq

VISITOR REGISTRATION SHEET

Ways & Means — 1 April 08

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Brewer	EMBARQ
Bob Wells	N.C. Tele Alliance
Barbara Conaway	BBCOR
Kim Crouch	NC Bar Assn
Daniel Long	NCUC
Lemuel W Hinton	NCUC
Thomas Moore	Kilpatrick & Wells
Patrice Roesel	NAACP

VISITOR REGISTRATION SHEET

Ways & Means — 1 April 09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stan Race	Verizon

HOUSE BILL 676

Short Title:	Law Enforcement Jurisdiction in Iredell Co.	(Local)
Sponsors:	Representatives McCormick, Howard, and Setzer (Primary Sponsors).	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary III.	

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO INSTITUTE TRADITIONAL JURISDICTIONAL BOUNDARIES FOR LAW ENFORCEMENT AGENCIES IN IREDELL COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 330 of the 1971 Session Laws is repealed.

SECTION 2. This act is effective when it becomes law. Prosecutions for offenses occurring outside the territorial jurisdiction of a local law enforcement agency 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 676:
Law Enforcement Jurisdiction in Iredell Co

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	April 1, 2009
Introduced by:	Reps. McCormick, Howard, Setzer	**Prepared by:**	Brenda J. Carter
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 676 repeals a local act granting the police of Statesville and Mooresville county-wide jurisdiction.***

CURRENT LAW: Under G.S. 15A-402, law-enforcement officers of cities may generally only arrest persons within their particular cities and on any property and rights-of-way owned by the city outside its limits, and at any point which is one mile or less from the nearest point in the boundary of the city. Officers may arrest persons outside the city when the person arrested has committed a criminal offense within the city, for which the officer could have arrested the person, and the arrest is made during such person's "immediate and continuous flight" from the city.

The Sheriff of Iredell County has the primary responsibility with respect to law enforcement and criminal investigations outside the municipalities within the county. However, under Chapter 330 of the 1971 Session Laws, police officers of the Town of Mooresville and the City of Statesville have county-wide jurisdiction. With the permission of their police chief, those officers have the same power to arrest and execute criminal process throughout Iredell County as they possess within their respective municipalities.

BILL ANALYSIS: House Bill 676 repeals the local act granting the police of Statesville and Mooresville county-wide jurisdiction. Repeal of the act would have no effect on prosecutions for offenses occurring before the effective date of the act.

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

H676-SMRV-24(e1) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 676 A BILL TO BE ENTITLED AN ACT TO INSTITUTE TRADITIONAL JURISDICTIONAL BOUNDARIES FOR LAW ENFORCEMENT AGENCIES IN IREDELL COUNTY.

☒ Without prejudice and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 9

Short Title:	No Texting While Driving.	(Public)
Sponsors:	Representatives Pierce, Harrison, Hall (Primary Sponsors); K. Alexander, M. Alexander, Allred, Bell, Bryant, Carney, Cleveland, Dickson, Dollar, Earle, England, Farmer-Butterfield, Fisher, Goforth, Goodwin, Jackson, Jones, Justice, Luebke, McLawhorn, Spear, Starnes, Tarleton, Underhill, and Weiss.	
Referred to:	Rules, Calendar, and Operations of the House.	

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO USE ADDITIONAL TECHNOLOGY ASSOCIATED WITH A MOBILE PHONE WHILE OPERATING A VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-137.3(a)(1) reads as rewritten:

"(1) Additional technology. – Any technology that provides access to digital media ~~such as~~including, but not limited to, a camera, electronic mail, music, the Internet, text messaging, or games."

SECTION 2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-137.4A. Unlawful use of additional technology.**

(a) Offense. – It shall be unlawful for any person to use additional technology, as defined in G.S. 20-137.3(a)(1), associated with any mobile phone, while operating a vehicle on a public street or highway or public vehicular area.

(b) Exceptions. – The provisions of the section shall not apply to any of the following while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of a public or private ambulance.

(c) Penalty. – A violation of this section shall be an infraction and shall be punishable by a fine of one hundred dollars ($100.00) and the cost of court. No drivers license points or insurance surcharge shall be assessed as a result of a violation of this section. Failure to comply with the provisions of this section shall not constitute negligence per se or contributory negligence by the operator in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a vehicle."

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

HOUSE BILL 9:
No Texting While Driving

2009-2010 General Assembly

Committee:	House Ways & Means / Broadband Connectivity, if favorable, Judiciary III	**Date:**	April 1, 2009
Introduced by:	Reps. Pierce, Harrison, Hall	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to First Edition H9-CSRV-12		

SUMMARY: This PCS for House Bill 9, as recommended by the subcommittee to which the bill was referred, would prohibit all drivers from using a mobile phone to read or send electronic mail or text messages, while operating a motor vehicle. An exception would apply for law enforcement officers, firefighters, and ambulance drivers in performance of their official duties. The bill would not apply to voice- operated technology, to GPS devices, or to devices that are part of a digital dispatch system such as OnStar.

[As introduced, this bill was identical to S22, as introduced by Sen. Forrester and S96, as introduced by Sen. Bingham. A PCS for S22 was given a favorable report by Senate Judiciary II and re-referred to Senate Appropriations.]

CURRENT LAW: North Carolina law currently prohibits the use of a mobile telephone or any additional technology associated with a mobile telephone by a person under the age of 18 while operating a motor vehicle (G.S. 20-137.3), or by a person operating a school bus (G.S. 20-137.4), with certain limited exceptions. See chart on reverse side for additional details.

"Mobile telephone" is a device used by subscribers and other users of wireless telephone service to access the service, and includes hand held and hands-free devices. "Additional technology" includes such things as cameras, electronic mail, music, the Internet, or games.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 9 would make it unlawful for a person to use a mobile telephone to enter letters or text as a means of communicating with another person, while operating a motor vehicle. The bill would also make it unlawful for a driver to read an electronic mail or text message on a mobile telephone. The prohibition would apply to all drivers except for law enforcement officers, firefighters, and ambulance drivers in the performance of their official duties.

Section 1 of the bill amends the definition of "additional technology" as it applies to the statutes prohibiting the use of mobile telephones by drivers under 18 and by persons operating a school bus. This change makes it clear that electronic mail and text messaging are not included as "additional technology" the use of which is punishable under those laws that apply only to drivers under 18 and to persons operating a school bus, and are therefore not subject to the exclusions that apply to those statutes.

Section 2 of the bill creates a new offense making it unlawful for <u>any</u> driver to operate a vehicle on a public street or highway or public vehicular area while using a mobile phone to create or read electronic mail or text messages. The offense would not include accessing caller ID information or any name or number stored in the mobile phone.

Exceptions:

- Law Enforcement Officer/Fire Department Members/Operators of public or private ambulances, while in the performance of official duties.

- The operator of a lawfully parked or stopped vehicle.
- The use of GPS or digital dispatch systems such as OnStar.
- The use of voice operated technology.

Penalties for School Bus Drivers: (These are the same as under current law)

- Class 2 misdemeanor
- $100.00 fine.
- No drivers license points or insurance surcharge.

Penalties Generally:

- Infraction.
- $100.00 fine.
- No drivers license points or insurance surcharge.

EFFECTIVE DATE: This bill would become effective December 1, 2009, and apply to offenses committed on or after that date.

BACKGROUND:

	Prohibition	Exceptions	Penalty
G.S. 20-137.3 ***[CURRENT LAW]***	**Persons under the age of 18** may not use mobile phone or associated technology while operating a motor vehicle while the vehicle is in motion.	• In emergency situation to call emergency response operator; hospital, physician, or health clinic; ambulance; law enforcement • To call parent, legal guardian, or spouse	• Infraction • $25 fine • No drivers license points, insurance surcharge, or court costs
G.S. 20-137.4 ***[CURRENT LAW]***	**Person operating a school bus, activity bus, or any vehicle transporting school children for compensation,** may not use mobile phone or associated technology while the vehicle is in motion.	• In an emergency situation, defined as circumstances such as medical concerns, unsafe road conditions, matters of public safety, or mechanical problems that create a risk of harm for operator and passengers	• Class 2 misdemeanor (1-30 days community punishment with no prior convictions) • Minimum $100 fine • No drivers license points or insurance surcharge

Wendy Graf-Ray, Heather Fennell, and Susan Sitze substantially contributed to this summary.

H9-SMRV-25(CSRV-12) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 9
PROPOSED COMMITTEE SUBSTITUTE H9-CSRV-12 [v.1]

4/1/2009 12:22:45 PM

Short Title: No Texting While Driving. (Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE IT UNLAWFUL TO USE A MOBILE TELEPHONE FOR E-MAIL OR TEXT MESSAGING WHILE OPERATING A VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-137.3(a)(1) reads as rewritten:

"(1) Additional technology. – Any technology that provides access to digital media ~~such as~~including, but not limited to, a camera, ~~electronic mail,~~ music, the Internet, or games. The term does not include electronic mail or text messaging."

SECTION 2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-137.4A. Unlawful use of mobile telephone for text messaging or electronic mail.**

(a) Offense. – It shall be unlawful for any person to operate a vehicle on a public street or highway or public vehicular area while using a mobile telephone to:

(1) Manually enter multiple letters or text in the device as a means of communicating with another person; or

(2) Read any electronic mail or text message transmitted to the device or stored within the device, provided that this prohibition shall not apply to any name or number stored in the device nor to any caller identification information.

(b) Exceptions. – The provisions of this section shall not apply to:

(1) The operator of a vehicle that is lawfully parked or stopped.

(2) Any of the following while in the performance of their official duties: a law enforcement officer; a member of a fire department; or the operator of a public or private ambulance.

(3) The use of factory-installed or aftermarket global positioning systems (GPS) or wireless communications devices used to transmit or receive data as part of a digital dispatch system.

(4) The use of voice operated technology.

(c) Penalty. – A violation of this section while operating a school bus, as defined in G.S. 20-137.4(a)(4), shall be a Class 2 misdemeanor and shall be punishable by a fine of not less than one hundred dollars ($100.00). Any other violation of this section shall be an infraction and shall be punishable by a fine of one hundred dollars ($100.00) and the costs of court.

No drivers license points or insurance surcharge shall be assessed as a result of a violation of this section. Failure to comply with the provisions of this section shall not constitute negligence per se or contributory negligence by the operator in any action for the recovery of damages arising out of the operation, ownership, or maintenance of a vehicle."

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 9 A BILL TO BE ENTITLED AN ACT TO MAKE IT UNLAWFUL TO USE ADDITIONAL TECHNOLOGY ASSOCIATED WITH A MOBILE PHONE WHILE OPERATING A VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

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

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

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 581

Short Title:	Partition Sales/Extend Report & Answer Times.	(Public)
Sponsors:	Representatives Bryant, Spear, Stam, Michaux (Primary Sponsors); Blue, Hall, Harrison, Jones, Lucas, Parmon, Pierce, Wainwright, and Womble.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary I.	

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE DEADLINE FOR THE COMMISSIONERS IN A PARTITION ACTION TO REPORT BACK TO THE COURT ON THEIR PROPOSED DIVISION OF THE LAND, AND TO EXTEND THE DEADLINE FOR RESPONDING TO A SUMMONS IN A PARTITION ACTION FROM TEN DAYS TO THIRTY DAYS, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-17 reads as rewritten:

"**§ 46-17. Report of commissioners; contents; filing.**

The commissioners, within a reasonable time, not exceeding ~~60~~ 90 days after the notification of their appointment, shall make a full and ample report of their proceedings, under the hands of any two of them, specifying therein the manner of executing their trust and describing particularly the land or parcels of land divided, and the share allotted to each tenant in severalty, with the sum or sums charged on the more valuable dividends to be paid to those of inferior value. The report shall be filed in the office of the superior court clerk: Provided, that the clerk of the superior court may, in ~~his~~ the clerk's discretion, for good cause shown, extend the time for the filing of the report of said commissioners for an additional period not exceeding 60 days. This proviso shall be applicable to proceedings now pending for the partition of real property."

SECTION 2.(a) G.S. 1-394 reads as rewritten:

"**§ 1-394. Contested special proceedings; commencement; summons.**

Special proceedings against adverse parties shall be commenced as is prescribed for civil actions. The summons shall notify the defendant or defendants to appear and answer the complaint, or petition, of the plaintiff within 10 days after its service upon the defendant or defendants, and must contain a notice stating in substance that if the defendant or defendants fail to answer the complaint, or petition, within the time specified, plaintiff will apply to the court for the relief demanded in the complaint, or petition. The summons must run in the name of the State, and be dated and signed by the clerk, assistant clerk or deputy clerk of the superior court having jurisdiction in the special proceeding, and be directed to the defendant or defendants, and be delivered for service to some proper person, as defined by Rule 4(a) of the Rules of Civil Procedure. The clerk shall indicate on the summons by appropriate words that the summons is issued in a special proceeding and not in a civil action. The manner of service shall be as is prescribed for summons in civil actions by Rule 4 of the Rules of Civil Procedure: Provided, in partition proceedings under Chapter 46 of the General Statutes or where the defendant is an agency of the federal government, or an agency of the State, or a local government, or an agency of a local government, the time for filing answer or other plea shall

be within 30 days after the date of service of summons or after the final determination of any motion required to be made prior to the filing of an answer."

SECTION 2.(b) Article 1 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"**§ 46-2.1 Summons.**

In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394."

SECTION 3. This act becomes effective October 1, 2009.

HOUSE BILL 581:
Partition Sales/Extend Report & Answer Times

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	April 1, 2009
Introduced by:	Reps. Bryant, Spear, Stam, Michaux	**Prepared by:**	Susan Sitze
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 581 extends the deadline for the commissioners in a partition action to report back to the court on their proposed division of the land, and extends the deadline for responding to a summons in a partition action from ten days to thirty days, as recommended by the Partition Sales Study Committee.***

[As introduced, this bill was identical to S612, as introduced by Sen. Atwater, which is currently in Senate Judiciary II.]

BILL ANALYSIS:

Section 1 of House Bill 581 extends the deadline for the commissioners in a partition action to report back to the court on their proposed division of the land from 60 days to 90 days.

Section 2 of House Bill 581 extends the deadline for responding to a summons in a partition action from 10 days to 30 days.

EFFECTIVE DATE: This act becomes effective October 1, 2009.

BACKGROUND:

H581-SMSA-26(e1) v1

NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK

BEVERLYN JONES BROOKER)
)
Petitioner)
)
v.)
)
PRODEV VIII, LLC)
)
Respondents.)

PETITION FOR PARTITION BY SALE OF REAL ESTATE

Petitioner alleges and says:

1. Exhibit A shows the name, address, marital status and the undivided interest of each Petitioner.

2. Exhibit B shows the name, address, marital status and the undivided interest of each Respondent.

3. The parties are tenants in common (or spouses of tenants in common) to the following described tract or parcels of land in Holly Springs Township, Wake County, North Carolina:

14.22 net acres with a PIN # 0659-60-6508 on the north side of Bass Lake Road consisting of all of Tract 1, containing 25.157 acres, more or less as shown on that survey entitled "Boundary Survey for Eddie Lee Faulk" recorded in Book of Maps 1992, Page 181, with a property address of 0 Bass Lake Road, Holly Springs, NC and PIN # 0659-60-6508.

Less and except the lands conveyed to SSL Limited Partnership by deed recorded in Deed Book 5506, Page 66, and shown on a survey entitled " Recombination Map for Eddie Lee Faulk and SSL Limited Partnership" recorded in Book of Maps 1993, Page 190.

4. Each tenant in common owns an undivided interest in the property as follows:

NAME	INTEREST
Beverlyn Jones Brooker	3.24%
ProDev VIII, LLC	96.16%

5. The Petitioner desires to hold her interest in severalty but the nature of the property is such that it cannot be physically divided without material damage to the interest of each party. The property consists of undeveloped land but petitioner's pro rata share will not encompass one developable lot.

6. On November 19, 2007 ProDev VIII, LLC executed deeds of trust recorded in Deed Book 12841, Page 427 and Deed Book 12841, Page 453, Wake County Registry, to First Mount Vernon Industrial Loan Association, as Noteholder, and Dale E. Duncan and Kathleen Neary, as Trustee.

   On November 19, 2007 ProDev VIII, LLC executed a deed of trust recorded in Deed Book 12841, Page 461, Wake County Registry, to PENSCO Trust Company Custodian of Southfield Partners, LLC Solo (K) Plan FBO David A. Cook, PENSCO A/C #10EK1, PENSCO Trust Company Custodian of Southfield Partners, LLC Solo (K) Plan FBO David A. Cook, PENSCO A/C #10EK2, and David A. Cook, as Beneficiaries, and Kilpatrick & Gudeman, as Trustee.

   On November 19, 2007 ProDev VIII, LLC executed a deed of trust recorded in Deed Book 12841, Page 470, Wake County Registry, to Southfield Partners, LLC, as Beneficiary, and Kilpatrick Gudeman, as Trustee.

   On January 20, 2008 ProDev VIII, LLC executed a deed of trust recorded in Deed Book 12930, Page 860, Wake County Registry, to Eddie Lee Faulk, as Beneficiary, and Affinity Title Corporation, as Trustee.

   Each deed of trust constitutes a lien on the interest of Pro Dev VIII, LLC land and should be paid and satisfied solely from the share of Pro Dev VIII, LLC.

WHEREFORE, Petitioners pray for the following relief:

1. That the Court appoint Paul Stam as Commissioner, who shall conduct a private sale of subject property pursuant to the provisions of G.S. 46-28 and G.S. 1-339.33 et. seq. with said sale to be subject to the confirmation by the Court and, when confirmation becomes final pursuant to G.S. 46-28.1, to make a deed to the purchasers thereof and, after paying expenses of the sale to distribute the net proceeds to the tenants in common pursuant to G.S. 46-33.

2. That the debts secured by the lien of the Deeds of Trust described in Paragraph 6 shall be paid solely from the share of ProDev VIII, LLC.

3. Such other and further relief as to the Court may seem just and proper.

_____

Paul Stam, Attorney for Petitioner
STAM, FORDHAM & DANCHI, P.A.
P.O. Box 1600
Apex, NC 27502
Tel: 919-362-8873
Fax: 919-387-7329

NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK

MARY N. KING, widow; JAMES A. KING, III and wife, JOY KING, ELIZABETH ZIEGLER OSBORNE, a free trader; CHARLES D. KING and wife, REBECCA KING; WILLIAM MacNIDER TROTT and wife, JEAN L. TROTT; ELIZABETH NORRIS OETTINGER, DAVID CRANDALL HARMON, and wife CAROL HARMON;

Petitioners,

v.

EDWARD MILTON BROUGHTON, and wife SUSAN BROUGHTON; JOHN NORRIS BROUGHTON, and wife DEBORAH BROUGHTON RAYMOND W. CATLETTE, Jr., unmarried; DORIS R. COLES, widow; EMMA HARMON CROMARTIE, and husband RICHARD L. CROMARTIE; WILLA MCKIMMON DICKENS, and husband WILLIAM DICKENS; JULIA MCMILLAN FALLON, and husband DENIS G. FALLON; JOHN C. HARMON, III, and wife CYNTHIA D. HARMON; BARBARA M. HAYO, Trustee; DR. GARLAND C. KING, and wife JANICE KING; JULIE KING LEE and husband THOMAS LEE; CAROL STREET MCMILLAN LEWIS, and husband STEVEN C. LEWIS, unmarried; ARTHUR MCKIMMON, II, widower; A. ALEXANDER MCMILLAN, JR.,unmarried; ALEXANDRA MCMILLAN MORDECAI, unmarried NANCY MARSHALL MANN, and husband JAMES H. MANN; AMANDA MCMILLAN MELTON, unmarried; SUE MARSHALL METTS, widow; VIRGINIA HULL MCKIMMON NOELKE, and husband WALTER NOELKE; AVERY G. NORRIS, JR., and wife SHARON NORRIS; DONALD O. NORRIS, and wife CONNIE NORRIS; ELIZABETH M. NORRIS, widowed; FLORA C. NORRIS, unmarried; PETER RAYMOND NORRIS, and wife MARTHA H. NORRIS; RICHARD L. NORRIS, and wife BONNIE NORRIS; "HAPPY" LOGAN GEARY OETTINGER, widow; MARGARET LOGAN OETTINGER, unmarried; LAURA ANN BROUGHTON RUSSELL, and husband SAMUEL REID RUSSELL, III; MARY ALLEN OETTINGER WESTRA, and husband GARY WESTRA; LEONARD EDWARD WHEELER, JR, and wife

PETITION FOR PARTITION BY PRIVATE SALE OF REAL ESTATE

ELEANOR M. WHEELER;)
JANE S. COLES)
WILLIAM HENRY WEED CRAWFORD, III)
and wife JUDITH COPELAND CRAWFORD)
NANCY CRAWFORD GRAY and husband)
WAYNE GRAY, WALTER B. CRAWFORD unmarried)
CAROL STEPHENSON CRAWFORD MARSHBURN)
and husband ROBERT MARSHBURN)
MATT NORRIS CRAWFORD and wife)
DEBORAH HUDSON CRAWFORD)
)
Respondents.)

Petitioners, complaining of the Respondents, allege and say:

1. Petitioners are all tenants in common with Respondents to land located in White Oak Township, Town of Apex, Wake County, North Carolina as will appear more fully hereafter. All petitioners and respondents are of full age and capacity and intermarried as set forth in the caption, except as stated hereafter.

2. This petition is brought pursuant to G.S. 46-1 eq seq. and G.S. 46-22 et seq. for a partition by private sale of real property.

3. The parties are tenants in common (and spouses of tenants in common) to land in the Town of Apex, White Oak Township, Wake County, described as follows:

3.67 acres, more or less as shown on a map entitled, "Apex First Development, LLC and Jessie A. Norris, Heirs" by BBM Associates dated January 21, 2006 and bounded on the northeast by Apex First Development, LLC (Old Mill Drive) and Portrait Homes Old Mill Village, LLC, on the northwest by Laura Duncan Road, on the southwest by Cary Oil Company and Doris S. Denning Heirs, Center Park Subdivision and Ronald Crabtree; bounded on the southeast by Center Heights Subdivision and A.F. Betts Heirs. And described as follows:

a. BEGINNING at a point where the southern right-of-way of Old Mill Drive intersects the eastern right-of-way Laura Duncan Road; thence with the right-of-way of Old Mill Drive the following courses and distances: South 64 degrees 09 minutes 12 seconds East 128.39 feet to a point; thence a curve to the right with a chord bearing of South 52 degrees 34 minutes 19 seconds East and chord distance of 188.72 feet; thence continuing a curve to the right with a chord bearing South 43 degrees 38 minutes 20 seconds East and a chord distance of 43.44 feet; thence South 40 degrees 59 minutes 25 seconds East 236.26 feet to a point; thence South 40 degrees 59 minutes 25 seconds East 5.14 feet to a point; thence leaving said right-of-way South 40 degrees 49 minutes 40 seconds East 452.19 feet to a iron stake; thence with the line of Tract D South 23 degrees 21 minutes 30 seconds West 67.82 feet to a point; thence North 66 degrees 38 minutes 27 seconds East 55.00 feet to the southeastern corner for Tract D; thence in a southeast direction approximately 15 feet to a point which is the northern corner of Center Heights Subdivision (Book of Maps 1996, Page 685, Wake County Registry); thence with Center Heights Subdivision South 22 degrees 15 minutes 31 seconds West 155.75 feet to an existing iron pipe, a corner of Lots 3 and 4; thence along the line of Ronald L. Crabtree (Book 6103, Page 861, Wake County Registry) North 40 degrees 52 minutes 27 seconds West 564.80 feet to a point; thence with the line of Center Park Subdivision (Book of Maps 1995, Page 774, Wake County Registry) North 22 degrees 05 minutes 22 seconds East 100.34 feet to a point which is a northeast corner of Cary Oil Company and Doris S. Denning Heirs; thence with their line North 40 degrees 49 minutes 40 seconds West 568.23 feet; thence North 45 degrees 25 minutes 21 seconds West 129.04 feet; thence North 50 degrees 58

minutes 00 seconds West 36.87 feet to a point; thence North 57 degrees 23 minutes 29 seconds West 41.45 feet to a point; then with the eastern right-of-way of Laura Duncan Road; thence with said right-of-way North 25 degrees 14 minutes 13 seconds East 42.37 feet to the point and place of BEGINNING, containing 3.38 acres, more or less.

b. Tracts A containing 0.200 acres and D containing 0.1087 acres on said map are part of the lands described and are to be dedicated to the Town of Apex as public road rights-of-way.

A railroad easement traversing the property from Jesse Allen Norris to the Cape Fear & Northern Railroad is recorded in Book 147, Page 669, Wake County Registry and was abandoned by Declaration of CSX Transportation, Inc recorded in Book 6697 page 443, Wake County Registry. A 30' easement for Public Service of North Carolina (gas) is within the area of the abandoned railroad easement. See Book of Maps 1987, Page 1049 for the northeastern line of the described property.

4. That the interest of the parties in the subject property as well as their marital status and address are as follows:

	NAME OF HEIR	INTEREST	SPOUSE	ADDRESS
A.	Carol Street McMillan Lewis	3096 453600	Steven C. Lewis	3304 Barnstable Court Raleigh, NC 27612 919 881-0318 carol@stonagency.net
B.	Julia McMillan Fallon	3096 453600	Denis G. Fallon	3310 Gordon Drive Blacksburg, VA 25060 540 951-3888 jfal@adelphia.net
C.	Amanda McMillan Melton	3096 453600	(unmarried)	601 Citrus Court Ponte Verdra Beach FL 32082 904 280-7847 amelton1234@yahoo.com
D.	Alexandra McMillan Mordecai	3096 453600	Samuel F. Mordecai, Jr.	3005 Glen Burnie Dr. Raleigh, NC 27607 919 787-9241 919 801-2041 fourmordecais@nc.rr.com
E.	A. Alexander McMillan, Jr.	3096 453600	(unmarried)	159 Lake Ellen Drive Chapel Hill, NC 27514 919 673-0626 amci42572@aol.com
F.	Claudius Augustus Street, Jr.	15480 453600	Mary Jane English Street	192 Westridge Road Advance, NC 27006 336 998-8416 336 231-8256

				800 489-0492 Fax: 336 998-7221 gusstreet@yadtel.net
G.	Mary Norris King	38880 453600	(unmarried)	1409 Hathaway Road Raleigh, NC 27608
H.	James A. King II	6480 453600	Joy King	3408 Huckabay Circle Raleigh, NC 27612 249-1002
I.	Dr. Garland C. King	6480 453600	Janice King	723 Murphy Highway Franklin, NC 28734
J.	Julie King Lee	6480 453600	Thomas Lee	1106 Carey Road Kinston, NC 28504
K.	Charles D. King	6480 453600	Rebecca King	2525 York Road Raleigh, NC 27608 249-1003
L.	John C. Harmon, III	10320 453600	Cynthia D. Harmon	9 Devonshire Dr. Albany, NY 12205 518-869-5709 charmon1@nycap.rr.com
M.	Elizabeth Harmon Osborne, a free trader	10320 453600	Separation from Michael Osborne 1410 Grappenhall Apex, NC 27502	5448 Apex Peakway #340 Apex, NC 27502 (w) 387-4450 (h) 372-1824 bezig51@nc.rr.com
N.	David Crandall Harmon	10320 453600	Carol Harmon	12831 Climbing Ivy Dr. Germantown, MD 20874 david.c.Harmon@verizon.net (w) 202-395-6831 (h) 301-972-1417
O.	Emma Harmon Cromartie	30960 453600	Richard L. Cromartie	155 Ocean Lake Dr. Apt. 509 Key Biscayne, FL 33149 305-361-1844
P.	Elizabeth M. Norris	13452 453600	(widowed)	4714 Ludwell Branch Ct. Raleigh, NC 27612 tel# 787-2616 fax# 786-0648

Q.	Laura Ann Broughton Russell	4484 453600	Samuel Reid Russell, III	3408 Churchhill Rd Raleigh, NC tel# 787-1319 broughtonrussell@aol.com
R.	Edward Milton Broughton	4484 453600	Susan Broughton	12 Partridge Run West Windsor, NJ 08550 tel# 609-275-2988
S.	John Norris Broughton	4484 453600	Deborah Broughton	609 Lange Court Libertyville, IL 60048 tel#847-816-0616
T.	Barbara M. Hayo	28320 453600	Trustee	319 Lafitte Rd. Summerland Key, FL 33042 tel# 305-872-9150 fax#305-296-4634 bhayo@historictours.com
U.	Avery G. Norris, Jr.	10452 453600	Sharon Norris	2507 Younts Road Indian Trail, NC 29482 tel# 704-882-9428
V.	Donald O. Norris	10452 453600	Connie Norris	4103 Smokey Pines Court, Ft. Pierce, FL 34951 (h) 772-464-3411 (o/f) 772-461-9645
W.	Richard L. Norris	10452 453600	Bonnie Norris	4615 Secret River Trace Port Orange, FL 32119 tel# 386-761-5102
X.	Peter Raymond Norris	56160 453600	Martha H. Norris	2816 Ridgemore Rd. N.W., Atlanta GA 30318 tel# 404-355-8901 marthahnorris@mindspring.com
Y.	Flora C. Norris	33696 453600	(unmarried)	513 E. Whitaker Mill Rd Room 153A Station 2 Raleigh, NC 27608-2348
Z.	Raymond W. Catlette, Jr.	14040 453600	(unmarried)	PO Box 8672 Incline Village, NV 89452 tel# 775-772-2229 rwcat@yahoo.com
AA.	Leonard Edward Wheeler, Jr.	8424 453600	Eleanor M. Wheeler	521 Seminole Ave. Eustis, FL 32726 tel#352-483-9555 hotflash521@aol.com

BB.	Doris R. Coles	6300 453600	(widow)	4625 Cloverfield Farm PO Box 72 Keswick, VA 22947 tel# 434-293-7022
CC.	Sue Marshall Metts	8370 453600	(widow)	423 Sylvan Lane Wilmington, NC 28409 910-452-2451
DD.	Nancy Marshall Mann	8370 453600	James H. Mann	3705 Reston Court Wilmington, NC 28403 910-799-1154
EE.	Arthur McKimmon, II	4590 453600	(widower)	Apt. 8302 Magnola Glen 5215 Creedmoor Road Raleigh, NC 27612
FF.	William MacNider Trott	4590 453600	Jean L. Trott	3348 Alleghany Drive Raleigh, NC 27609 tel#782-0583 Atty bus. address: 3101 Glenwood Ave Raleigh, NC 27612 tel#782-6860 fax#782-6753 wmt@yhm.com
GG.	Kate McKimmon Howell	4590 453600	(widow)	1305 Diehl Street Raleigh, NC
HH.	Willa McKimmon Dickens	2295 453600	William Dickens	129 Church Street Enfield NC 27823 tel#919-807-7217 fax#807-7169
II.	Virginia Hull McKimmon Noelke	2295 453600	Walter Noelke	2501 W. Avenue J. San Angelo, TX 76901 325-949-2680
JJ.	"Happy" Logan Geary Oettinger	10320 453600	(widow)	Stoneybrook Assisted Living, Apt. 102 4650 S. West Hollyhock Circle Corvallis, Oregon 97333 Tel:425-269-4224 POA: Reu Elizabeth Oettinger
KK.	Margaret Logan Oettinger	6880 453600	unmarried	9920 NE 119 St. Kirkland, WA 98034-4244 Tel: 425-820-1974

				m_oettinger@yahoo.com
LL.	Rev. Elizabeth "Liz" Norris Oettinger	6880 453600	unmarried	3323 SW Chintimini Ave. Corvallis, OR 97333 elizabethoettinger@msn.com Tel: 541-670-6400
MM.	Mary Allen Oettinger Westra	6880 453600	Gary Westra	212 Windsong Road, Wilmington, NC 28411. mowestra@yahoo.com Tel: 910-681-1400
NN.	Jane S. Coles	6300 453600	(widow)	Frances Coles Sebring (daughter & POA) Tel: 434-971-8800 (o) 434-971-4764 (fax) dacolz@earthlink.net
OO.	William "Bill" Henry Weed Crawford, III	3672 453600	Judith Copeland Crawford	200 James Mill Lane Williamsburg, VA 23185 Tel: 757-565-1170 kilduck@widomaker.com
PP.	Nancy Crawford Gray	3672 453600	Wayne Gray	1202 Anne Street Henderson, NC 27536 Tel: 252-492-5675 unitedwayvance@vance.net
QQ.	Walter B. Crawford	3672 453600	unmarried	3607 Harrison Road Kinston, NC 28504 Tel: 252-527-0547 crawfow2@aol.com
RR.	Carol Stephenson Crawford Marshburn	3672 453600	Robert Marshburn	11509 N. Monticello Dr. Knoxville, TN 37034 (865) 966-1254 (865) 567-4037 (854) 539-8628 (wk) forgetwhat@aol.com
SS.	Matt Norris Crawford	3672 453600	Deborah Hudson Crawford	122 Discovery Lane Williamsburg, VA 23185 Tel: 757-220-0052 kingsman0@aol.com

5. On information and belief the title of the parties to the land described in paragraph 3 was acquired as follows. The same was owned by Jesse Allen Norris who was born December 10, 1831 and died on November 24, 1916 and whose will is probated of record in Will Book H, Page 318, Clerk of Superior Court of Wake County (Estate File # 2923). (His first spouse was

Amelie (Amy) Ann Adams Norris (married July 10, 1856 and died 1871, His second spouse was Ellen Coffield, The will names beneficiaries as follows:

A. Maude Norris, who died September 18, 1971 with no spouse or children, as shown in Estate File 71-E-502 (Wake County). Her will does not devise real property. Her heirs are therefore her collateral relatives as set out below.

B. Maybelle Norris, who died in Wake County prior to 1975, with no spouse or children or will and therefore, on information and belief, her heirs are therefore her collateral relatives as set out below. She was declared incompetent (File # 5917) before her death.

C. The children of Elizabeth Norris Montgomery, also known as "Lizzie", who predeceased her father, Jesse A. Norris, leaving the following children.

1. Julia Lilly Montgomery Street (married to C. Augustus Street who died in 1969), who was born January 19, 1898 and died September 1993 in Forsyth County (her nickname was WuWu and she was named North Carolina Historian of the year in 1993)). Her only heir were.

a. Her only daughter, Carol Montgomery Street McMillan, died August 24, 2002 in Wake County. She was married to Archibold A. McMillan who pre-deceased her on December 17, 1986 in Wake County. Her heirs/beneficiaries are her 5 children by will:

1. Carol Street McMillan Lewis, married to Steven C. Lewis, 3 Barnstable Court, Raleigh, NC 27612, Tel #919-881-0318, Email: caroll@stoneagency.net.

2. Julia McMillan Fallon, married to Denis G. Fallon, 3310 Gordon Drive, Blacksburg, VA 25060, Tel #540-951-3888, email: jfal@adelphia.net.

3. Amanda McMillan Melton, unmarried, 601 Citrus Court, Ponte Vedra Beach, FL 32082, Tel #904-280-7847, email: amelton1234@yahoo.com

4. Mrs. Alexandra McMillan Mordecai married to Samuel F. Mordecai, Jr., 3005 Glen Burnie Drive, Raleigh, NC 27607. Phone: 787-9241 and 801-2041. Email: fourmordecais@nc.rr.com

5. A. Alexander McMillan, Jr., unmarried, 159 Lake Ellen Drive, Chapel Hill, NC 27514, Tel #919-673-0626, Email: amcmi42572@aol.com

b. Claudius Augustus Street, Jr. (spouse is Mary Jane English Street) 192 Westridge Road, Advance, NC 27006 phone: 336-998-8416, 336-231-8256, 1-800-489-0492, fax: 336-998-7221
email: gusstreet@yadtel.net

2. Amy Allen Montgomery Oettinger, died at San Marino, CA in 1977. She was predeceased by her husband, Leon Oettinger. Their only surviving child was Dr. Leon Oettinger, Jr., MD who died at Duarte, California on April 22, 1983. His widow is "Happy" Logan Geary Oettinger, Stoneybrook Assisted Living Apt. 102, 4650 S. West Hollyhock Circle, Corvellis, Oregon 97333.

   Their daughters are:

   a. Margaret Logan Oettinger, unmarried, Tel: 425-820-1974; 9920 NE 119th Street, Kirkland, WA 98034-4244; email: m_oettinger@yahoo.com

   b. Rev. Elizabeth Norris Oettinger, unmarried, 3323 SW Chintimini Ave. Corvallis, OR 97333.

   c. Mary Allen Oettinger Westra, spouse: Gary Westra, 212 Windsong Road, Wilmington, NC 28411. Email: mowestra@yahoo.com .

3. Samuel Bays Montgomery,(a 1928 Army Equestrian Olympian) who died 1929, at Walter Reed Hospital leaving no spouse or children as per the 1974 inventory of J.A. Norris Estate and, on information and belief, his heirs are the collateral relatives set out above.

D. Garland C. Norris, who died September 30, 1980, See estate file 80-E-1153, leaving his spouse Mary Boldridge Norris (87-E-1196 and whose interest also descended to her children), (the following children):

1. Frances Hill Norris, deceased, Forsyth County, 94-E-305, no children. According to her will her property was devised to Mary Norris King and her four children.

2. Mary Norris King, 1409 Hathaway Road, Raleigh, NC 27608 (plaintiff).

   a. James A. King II, (plaintiff), & spouse Joy.3408 Huckabay Circle, Raleigh, NC 27612.

   b. Dr. Garland C. King, & spouse Janice.723 Murphy Highway, Franklin, NC 28734.

   c. Julie King Lee, & spouse Thomas.1106 Carey Road, Kinston, NC 28504.

   d. Charles D. King, 2525 York Road, Raleigh, NC 27608, Tel #249-1003 (Spouse, Rebecca) (plaintiff).

E. Stella Nox Harmon, who died on May 19, 1956, see Wake Estate File 15388, who had the following spouse and children:

1. Rev. John C. Harmon, who is now deceased born 3/27/1876, died 3/15/1971 in Durham, N.C.

2. John C. Harmon, Jr., was born December 13, 1905 and died at Morehead City, N.C., March 27, 1995, leaving:

   a. Spouse, Lucille Crandall Harmon who died September 5, 2001 at Colonie, New York, and their joint children are:

   b. Elizabeth Harmon Ziegler Osborne, a free trader by separation agreement with, spouse is Michael Osborne, 5448 Apex Peakway #340, Apex, N.C. 27502, tel: (w)387-4450 (h), 372-1824 bezig51@nc.rr.com .

   c. John C. Harmon, III, spouse is Cynthia D. Harmon, 9 Devonshire

      Dr., Albany NY 12205, tel: 518-869-5709, charmon1@nycap.rr.com .

   d. David Crandall Harmon, spouse is Carol Harmon, 12831 Climbing Ivy Dr., Germantown, MD 20874, david.c.Harmon@verizon.net

3. Emma Harmon Cromartie, spouse is Richard L. Cromartie, 155 Ocean

   Lane Drive, Apt. 509, Key Biscayne, FL 33149 tel: 305-361-1844

F. Walter Lee Norris, who was born April 23, 1864 and died July 12, 1949 at Ft. Pierce, Florida leaving a spouse, Ada Lee Rollins who died June 16, 1956 at Fort Pierce, Fl and the following children:

1. Julian R. Norris, who died at Fort Pierce, FL on April 8, 1979, with no prob estate and no children. On information and belief, his spouse was Emma Davis Norris who predeceased him.

2. Harold Adams Norris, died April 8, 1980, Ft. Pierce, FL, (no probate estate) never married and no children.

3. Charlotte Norris Enns – died in 1988 or 1989, Ft. Pierce, FL, no children, no probate estate.

4. Jesse Allen Norris (who was born January 10, 1906 and died on January 31, 1982), see estate file 82-E-156, who devised his property to his wife, Mary McIver Johnson Norris, who died on March 30, 1988, in Wake County (88-E-593) who devised her real estate:

   a. One half to Dr. Jesse Allen Norris, Jr. (President of Louisburg College), who was born January 27, 1937 and died in 2004, see estate file #88-E-593. His widow is Elizabeth McLamb Norris, of 4714 Ludwell Branch Court, Raleigh, NC 27612/Tel #787-2616 and 786-0648 (fax) The will of Jesse Allen Norris, Jr. 2004, named Elizabeth M. Norris as the sole beneficiary.

   b. One half to grandchildren, (children of Ann Norris Broughton who had died January 21, 1970)

1. Laura Ann Broughton Russell, 3408 Churchill Road, Raleigh, NC, 27606Tel #787-1319, email:

broughtonrussell@aol.com (whose spouse is Samuel Reid Russell, III)

2. Edward Milton Broughton, currently of 12 Partridge Run, West Windsor, NJ 08550. His spouse is Susan. Tel #609-275-2988

3. John Norris Broughton, currently of 609 Lange Court, Libertyville, IL 60048, Tel #847-816-0616 (whose spouse is Deborah).

5. Rachel Norris Mayers, who died October 7, 2003(predeceased by her husband Herbert William Drayton Mayers) (03 CP 1379-WH) in Ft. Pierce, FL (St. Lucie County) leaving residuary estate to "The Rachel Norris Mayers Revocable Trust" (dated September 24, 2002) The Trustee is Barbara M. Hayo, 319 Lafitte Rd., Summerland Key, FL 33042, phone: 305-872-9150; bhayo @ historictours.com

6. Avery Gladstone Norris, Sr., who died, May 14, 1972, in Ft. Pierce, (no probate estate) FL, leaving a spouse, Catherine Odum Norris. She died around 1985 at Ft. Pierce leaving no estate and three children of both of them:

   a. Avery G. Norris, Jr., (spouse, Sharon) 2507 Younts Road Indian Trail, North Carolina, 29482, 704-882-9428.

   b. Donald O. Norris, of Ft. Pierce, a barber, spouse is Connie, (h) 772-464-3411, (o and fax) 772-461-9645, 4103 Smokey Pines Court, Ft. Pierce FL 34951.

   c. Richard L. Norris, of (spouse is Bonnie) 4615 Secret River Trace, Port Orange, FL 32119/386-761-5102

7. Winston Lee Norris, who died before 1944 without children.

8. Russell Norris predeceased his father, without children.

G. Jesse Raymond Norris, (who married Dora Fowler Norris who died in about 1987 or 1988 at Atlanta, Georgia) who died February 7,1968 in Wake County. Their only son and heir was:

1. Peter Raymond Norris and spouse, Martha H. Norris, 2816 Ridgemore Road, N.W., Atlanta, GA 30318, 404-355-8901 marthahnorris@mindspring.com

H. Herbert E. Norris, A state senator and the DA of Wake County, who died February 21, 1923) (His spouse was Mary Emma Burns of Pittsboro) leaving the following child as his only heir.

1. Herbert B. Norris, who is deceased, see Estate File 94-E-1707/86-E-962, who had the following children:

   a. Flora C. Norris, (born May 23, 1923) currently of 513 E. Whitaker Mill Road, Room 153A, Station 2, Raleigh, NC 27608-2348. / Her Power of Attorney is Randy Worth.

   b. Emma Burns Norris Catlette (born September 21, 1911 and died about 2001 in Wake County), (Estate handled by Randy Worth) she left a child: (her husband, Raymond W. Catlette, Sr. having predeceased her in 1983) as her only heir.

      1. Raymond W. Catlette, Jr., unmarried, P. O. Box 8672, Incline Village, NV 89452. (rwcat@yahoo.com) (775-772-2229)

      2. Another daughter, Anne Whitaker Catlette Foster died January 25-26, 1970 leaving a spouse, Karl Foster, but no children.

   c. Elizabeth Edmunds Norris, unmarried, who died April 16, 2004 in Wake County (04-E-1002) whose will left her share to Flora C. Norris

   d. Mary Ransom Norris Wheeler, (born October 3, 1920 and who died on February 8, 1997) devising by Article IV of her will ½ to her sister, Elizabeth Edmunds Norris and ½ to her son: (98-E-463).

      1. Leonard Edward Wheeler, Jr. 521 Seminole Avenue, Eustis, Florida 32726. (1wheeler45@aol.com) (spouse is Eleanor M. Wheeler, hotflash521@aol.com , 352-483-9555.

   e. Another daughter, Sarah W. Norris, who died in Wake County in 1997 leaving no spouse, will or child.

I. Cornelia Alice Norris (her husband was Matthew Tyson Norris) (born August 27, 1857 daughter of Jesse A. Norris from a prior marriage), died testate in 1935, Will Book M, Page 212, Estate File #4651 (archives) estate #8490, leaving the following children as beneficiaries under her will, V.12: "To my four daughters and their heirs"

1. Mary Norris Coles (born in 1878 and married Henry A. Coles of Atlanta, GA who died in 1929 in New Orleans) She predeceased (in about 1930 in Atlanta) her mother leaving the following child:

   a. Peyton Skipwith Coles (who was born in 1901 died July 22, 1957) Will Book X-218 (file 16023) leaving as his beneficiaries (his first cousins):

      1. Roberts Coles died 1999 in Albemarle County, VA leaving a wife and 5 children. On information and belief he died testate leaving by will (Book 94 – page 16, Albemarle County and exemplified copies recorded in Wake County) all to the marital share and tl Family Trust. Since the Family Trust was fully funded his interest in this property goes directly to:

a. Doris R. Coles, widow, 4625 Cloverfield Farm, P.O. Box 72, Keswick, VA 22947, Tel #434-293-7022.

2. George M. Coles, Sr., who died in 1974 in Charlottesville, VA, leaving by will (Book 20 page 424 Albermarle County and exemplified copies recorded in Wake County) to his spouse Jane S. Coles, Age 91. As additional information Frances Coles Sebring is her power of attorney and daughter. (o) 434-971-8800/(fax) 434-971-4764, email: dacolz@earthlink.net

2. Ethel Norris ("Ockie") Marshall, who died on January 14, 1974, estate file #74-E-49, leaving by her will (in which she refers to herself as a widow) to:

a. Ethel Norris Marshall Stephenson (later known as Ethel Norris S. Magruder) who died in testate around 1996 at New Hanover County. Her children and only heirs are:

1. Sue Marshall Metts, 423 Sylvan Lane, Wilmington, NC 28409, widow.

2. Nancy Marshall Mann, 3705 Reston Court, Wilmington, NC 28403 (Her spouse is James Mann)

3. Willa Norris McKimmon, who died June 30, 1977, estate file #77-E-807, leaving children (her spouse, James McKimmon, III, having predeceased her in 1928).

a. Arthur McKimmon, II, widower Apt. 8302 Magnola Glen, 5215 Creedmoor Road, Raleigh, NC 27612

b. Cornelia Norris McKimmon Trott, died on 1994, Estate file #94-E-2805 (Wake County), leaving as beneficiary under her will one child:

1. William MacNider Trott, 3348 Alleghany Drive, Raleigh, NC 27609, Tel #782-0583, Attorney, business address: 3101 Glenwood Ave., Raleigh, NC 27612, Tel #782-6860/fax #782-6753, email: wmt@yhm.com Spouse is Jean L. Trott.

c. Kate McKimmon Howell, 1305 Diehl Street, Raleigh, NC (widow)

d. Henry Hull McKimmon who died testate in Edgecomb County, 1992 (date) leaving a spouse, two children and a will:

1. Spouse: Ida Smith McKimmon, who died 1995 at Edgecomb County leaving the same two children:

2. Willa McKimmon Dickens, 129 Church Street, Enfield, NC 27823 (tel 919-807-7217/fax 807-7169)(spouse is William Dickens)

3. Virginia Hull McKimmon Noelke, 2501 West Avenue J.San Angelo, TX 76901 (College professor head of U.S. Stamp Commission) (Her spouse is Walter Noelke.)

4. Ruby Norris Crawford Primrose, (first husband was Jacob Crawford, second husband was Jesse Primrose) was born in 1888 and died January 8, 1978. Her will was not offered for probate but is recorded in Vance County 78-E-12 and names her five grandchildren as heirs. Her only son, W.C. Crawford, predeceased her in August 1968. The following five grandchildren are as listed in her Will:

   a. William "Bill" Henry Weed Crawford, III, 200 James Mill Lane, Williamsburg, VA 23285, Tel: 757-565-1170, kilduck@widomaker.com (His spouse is Judith Copeland Crawford)

   b. Nancy Crawford Gray, 1202 Anne Street, Henderson, NC 27536, Tel: 252-492-5675, unitedwayvance@vance.net (her spouse is Wayne Gray)

   c. Walter B. Crawford, 3607 Harrison Road, Kinston, NC 28504, Tel: 252-527-0547, crawfow2@aol.com (unmarried)

   d. Carol Stephenson Crawford Marshburn, 11509 Monticello Drive, Knoxville, TN 37922, Tel: 865-966-1254, forgetwhat@aol.com (her spouse is Robert Marshburn)

   e. Matt Norris Crawford, 122 Discovery Lane, Williamsburg, VA 23185, Tel: 757-220-0052, kingsman0@aol.com (his spouse is Deborah Hudso Crawford)

5. There were other children of Jesse Allen Norris who were not named in his will as beneficiaries but for the historical record:

Mary Florence Norris – born June 15, 1861 and died 1862.

Martha Louise Norris – born December 10, 1862

Elizabeth Blanche Norris – born June 30, 1865

Julian Jeptha Norris – born August 29, 1867 and died 1868.

6. The Petitioners desire to hold their interest in severalty but the nature and size of same is such that a division cannot be made without substantial injury to the interests of the parties. The value of the share of each party in case of a partition is materially less than the share of each in the money equivalent that can be obtained from the sale of the whole.

7. That the property has not been listed for taxes by Wake County and the discovered tax on the property which has remained unpaid should be paid from the proceeds of sale.

NOW, THEREFORE, the Petitioners pray for the following relief:

1. That the Clerk appoint Paul Stam as Commissioner to conduct a private sale of the subject property pursuant to the provisions of Article 29A part 3 of Chapter 1 of the General Statutes,

said sale to be subject to confirmation and, when the confirmation becomes final pursuant to G.S. 46-28.1, to make a deed to the purchaser, and after paying the expenses of sale, to distribute the proceeds to the tenants in common as their interests are shown in paragraph 4 of the petition.

2. That before making distribution, the Commissioner, as part of the costs of sale, list the property for taxation with the Town of Apex and Wake County and from the proceeds of sale pay the ad valorem taxes through 2006.

3. That the Clerk tax as part of the costs of this action a reasonable attorney's fee to petitioner's attorney for the time, effort and skill required to bring this action.

4. That the Clerk order a survey of the said property pursuant to N.C.G.S. 1-408.1, with the costs to be taxed as part of the costs of this action, and to authorize the Commissioner to direct the surveyor to prepare a division of the property into one or more parcels for purpose of sale and to consent to a recombination map with adjoining properties if a sale is approved, in the event that the Commissioner, in his discretion, determines that the highest price may be procured by that method.

STAM, FORDHAM & DANCHI, P.A.

By:_____

Paul Stam
Attorney for Petitioners
P.O. Box 1600
Apex, NC 27502
Tel: (919) 362-8873
Fax: (919) 387-7329
Email: paulstam@bellsouth.net

Document/King/PetitionforPartition

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 581 A BILL TO BE ENTITLED AN ACT TO EXTEND THE DEADLINE FOR THE COMMISSIONERS IN A PARTITION ACTION TO REPORT BACK TO THE COURT ON THEIR PROPOSED DIVISION OF THE LAND, AND TO EXTEND THE DEADLINE FOR RESPONDING TO A SUMMONS IN A PARTITION ACTION FROM TEN DAYS TO THIRTY DAYS, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, April 8, 2009

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, April 8, 2009, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Thom Tillis; Representatives Kelly Alexander, Lucy Allen, Angela Bryant, Mitch Gillespie, Jim Gulley, Phil Haire, Dewey Hill, Mark Hilton, Sarah Stevens, Joe Tolson, and Winkie Wilkins. Staff in attendance: Brenda Carter, Peter Capriglione and Susan Seitz. House Sergeant-at-Arms assisting: John Brandon, Bob Rossi and Mike Martin. House Pages: Michael Vidal from Wake County sponsored by Representative Martin, Aaron Hunt from Rutherford County sponsored by Rep. England and Kayla Orr from Pender County sponsored by Representative Carolyn Justice. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. Chairman Faison is the primary sponsor for House Bills 786 and 136 so he turned the meeting over to Rep. Kelly Alexander and Vice-Chair Tillis at the appropriate times. The following bills were placed before the Committee:

House Bill 786–A BILL TO BE ENTITLED: an act to establish an office of prosecution services to manage the budgetary aspects of the various district attorney offices. Chair called upon the bill sponsor Rep. Faison to explain the bill. After the explanation of the bill Chairman Alexander opened the floor for questions and comments. Rep. Hilton was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. *(Attachment 3)*

House Bill 595–A BILL TO BE ENTITLED: an act creating the Joint Legislative study Committee on high-speed Internet in underserved urban areas. Chair called upon the bill sponsor Rep. Alexander to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Hilton was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. *(Attachment 4)*

House Bill 722–A BILL TO BE ENTITLED: an act to provide that Glass vials that are a certain length and diameter that may be used as drug paraphernalia shall be sold from behind the counter and to require that a purchaser provide certain identifying information when purchasing these products. Rep. Haire moved that the proposed committee substitute be before the committee. Hearing no objection, the Chair called upon the bill sponsor Rep. Hilton to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was

recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, P.C. S. and Committee Report are attached. (*Attachment 5*)

House Bill 136–A BILL TO BE ENTITLED: an act to expand the authority of the North Carolina Department of transportation to locate and acquire right-of-way for the location, above or below ground, of fiber-optic cable. Chair called upon the bill sponsor Rep. Faison to explain the bill. After the explanation of the bill Chairman Tillis opened the floor for questions and comments. Rep. Alexander was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 6*)

House Bill 532–A BILL TO BE ENTITLED: an act appropriating funds to the E NC authority to support connectivity initiatives and to advance technology-based economic development throughout the state. Chair called upon the bill sponsor Rep. Tolson to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 7*)

Chairman explained that the committee had two bills left and both are on the floor for discussion only.

House Bill 578–A BILL TO BE ENTITLED: an act to prohibit attorneys representing parties in a partition action from serving as commissioners to divide the land, except by consent of the parties, and to specify who may not hold a partition sale of property and who may not purchase property in a partition sale, as recommended by the partition Sales Study Committee. The Bill is attached. *(Attachment 8)*

House Bill 580–A BILL TO BE ENTITLED: an act to provide greater notice to parties who may be unknown in a partition proceeding, to codify the current practice of granting owners credit for their existing interest in land when bidding on a partition sale, and to require a court to order an independent appraisal if a party to the partition challenges the amount bid in a partition sale, as recommended by the Partition Sales Study Committee. The Bill is attached. *(Attachment 9)*

The Chairman and the Committee felt House Bills 578 & 580 would be best served in a sub-committee. Chairman Faison appointed Representative Allen as chair, as well as Representatives Alexander, Stevens and Haire to serve on the committee.

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:50 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, April 8, 2009
1:00PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	HB 786	Office of Prosecution Services.	Representative Faison
2.	HB 595	Study High-Speed Internet/Underserved Cities.	Representative Alexander
3.	HB 722	Regulate Sales of Glass Vials.	Representative Hilton
4.	HB 136	DOT/Fiber-Optic Cable.	Representative Faison
5.	HB 532	E-NC Connectivity/Economic Development Funds.	Representative Tolson
6.	HB 578	Partition Sales/Commrs., Sellers, Buyers.	Representative Bryant
7.	HB 580	Partition Sales/Notice, Credit, Appraisal.	Representative Bryant

4. **Adjourn**

VISITOR REGISTRATION SHEET

Ways + Means — 4-8-09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Dixon	ATOT
Thom Moore	Edwards & Walsh
Martin Bolock	EMBARQ
Steve Brewer	EMBARQ
Mariah West	NC ADC
Pete Powell	NC ADC
Rev. Melvin Whitley	Tell Melvin Consulting
Jon Kent	DA-21
Bob Wells	N.C. Telephone Alliance
Alicia Dail	NWC
Jeff Hunt	Cong of DAs DA 29-B

VISITOR REGISTRATION SHEET

Ways + Means — 4-8-09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Scoggin	KLG
Brad Phillips	TWC
Sammy Roberson	TWC
Jim Tramay	AT+T
Howard Clement III.	City Councilman Durham, NC.
Colleen Kochanek	KLG
Steve Woodrum	NLFB
Marvin Fratus	Brady Pierce
Cathy Thomas	NC Assn of REALTORS
David Ferrell	NCLTA
John Carrellus	NC Commerce
Dana Sipe	Smith Anderson

VISITOR REGISTRATION SHEET

Ways & Means — 4-8-09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Steele, Jr	NC Bar Assn. Real Property Sec'n & Wishart Norris Henninger & Pittman P.O. Drawer 1995 Burlington NC 27216-1995
Katherine Wilkerson	Lynch & Eatman, LLP P.O. Box 30515, Raleigh NCBA - Real Property
Kim Crouch	NC Bar Association
Stan Pace	Verizon
Jane Patterson	e-NC Authority
Angie Bailey	e-NC Authority
Cath Rice	Action Audits.
Carole Stern	NC School of Sci. & Math
CHARLES PITTMAN	e-NC
Peg Kirk	N.C. School of Sci. & Math
Seth Edwards	DA - 2nd District

VISITOR REGISTRATION SHEET

Ways + Means — 4-8-09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Peg Dorer	Conference of District Attys
Tom Horner	DA-23
Clark Everett	DA - 3A
Jim Woodall	DA - 15B
Allison Cooper	RRW Attorneys, P.A.
Doris Weaver	NC CWA
Curtis Shew	NC CWA
Tom Coley	NC CWA
John Merritt	McGuire Woods

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Johanna Reese	DOT
Elizabeth Dalton	NCRMA
Andy Ellen	NCRMA
Connie Wilson	CWC

HOUSE BILL 786*

Short Title:	Office of Prosecution Services.	(Public)
Sponsors:	Representatives Faison; K. Alexander, Guice, Justus, Sutton, and Wilkins.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Appropriations.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN OFFICE OF PROSECUTION SERVICES TO MANAGE THE BUDGETARY ASPECTS OF THE VARIOUS DISTRICT ATTORNEY OFFICES.

The General Assembly of North Carolina enacts:

SECTION 1. Subchapter III of Chapter 7A of the General Statutes is amended by adding a new Article to read:

"Article 10.
"Prosecution Services Act.

"**§ 7A-80. Title.**

This Article shall be known and may be cited as the "Prosecution Services Act of 2009."

"**§ 7A-81. Purpose.**

The purpose of this Article is to:

(1) Enhance oversight of the criminal prosecution and related services provided at State expense;

(2) Improve the quality of prosecution and ensure that justice is being sought on behalf of the people of the State of North Carolina;

(3) Establish uniform policies and procedures for the delivery of prosecution services;

(4) Generate reliable statistical information in order to evaluate the prosecution services provided and funds expended; and

(5) Deliver prosecution services in the most efficient and cost-effective manner without sacrificing the quality of justice.

"**§ 7A-82. Establishment of Office of Prosecution Services.**

(a) The Office of Prosecution Services, which is administered by the Director of Prosecution Services and includes the Commission on Prosecution Services, is created within the Judicial Department. As used in this Article, "Office" means the Office of Prosecution Services, "Director" means the Director of Prosecution Services, and "Commission" means the Commission on Prosecution Services.

(b) The Office of Prosecution Services shall exercise its prescribed powers independently of the head of the Administrative Office of the Courts. The Office may enter into contracts, own property, and accept funds, grants, and gifts from any public or private source to pay expenses incident to implementing its purposes.

(c) The Director of the Administrative Office of the Courts shall provide general administrative support to the Office of Prosecution Services. The term "general administrative support" includes purchasing, payroll, and similar administrative services.

(d) The budget of the Office of Prosecution Services shall be a part of the Judicial Department's budget. The Commission on Prosecution Services shall consult with the Director

of the Administrative Office of the Courts, who shall assist the Commission in preparing and presenting to the General Assembly the Office's budget, but the Commission shall have the final authority with respect to preparation of the Office's budget and with respect to representation of matters pertaining to the Office before the General Assembly.

(e) The Director of the Administrative Office of the Courts shall not reduce or modify the budget of the Office of Prosecution Services or use funds appropriated to the Office without the approval of the Commission.

"**§ 7A-83. Responsibilities of the Office of Prosecution Services.**

The Office shall be responsible for:

(1) Establishing management and oversight of the budget for the district attorneys and any disbursement of funds;

(2) Identifying programs and policies that create greater efficiencies and effectiveness in the prosecution function and that provide information on the fiscal and practical impact created by changes in the criminal law and procedure;

(3) Supporting the offices of district attorneys and their staffs through training, technical assistance, publications, and related services;

(4) Providing district attorneys with the information and technology that they need to effectively process their caseloads and comply with statutory requirements; and

(5) Providing, in extraordinary circumstances, assignment of special prosecutors and determine compensation if necessary.

"**§ 7A-84. Establishment of the Commission on Prosecution Services.**

(a) The Commission on Prosecution Services is created within the Office of Prosecution Services and shall consist of 13 members. To create an effective working group, assure continuity, and achieve staggered terms, the Commission shall be appointed as provided in this section.

(b) The members of the Commission shall be appointed as follows:

(1) The Chief Justice of the North Carolina Supreme Court shall appoint three members, two of whom shall be active district attorneys and one of whom shall be a nonattorney.

(2) The Governor shall appoint three members, two of whom shall be active district attorneys and one of whom shall be a nonattorney.

(3) The General Assembly shall appoint two members, one of whom shall be an active district attorney and one of whom shall be an attorney, upon the recommendation of the President Pro Tempore of the Senate.

(4) The General Assembly shall appoint two members, one of whom shall be an active district attorney and one of whom shall be an attorney, upon the recommendation of the Speaker of the House of Representatives.

(5) The North Carolina State Bar shall appoint one member, who shall be an attorney.

(6) The Attorney General.

(7) The Secretary of Crime Control and Public Safety.

(c) The terms of members appointed pursuant to subsection (b) of this section shall be as follows:

(1) The initial appointments by the Chief Justice shall be for four years.

(2) The initial appointments by the Governor shall be for three years.

(3) The initial appointments of active district attorneys by the General Assembly and the initial appointment by the North Carolina State Bar shall be for two years.

(4) The initial appointments of attorneys by the General Assembly shall be for one year.

At the expiration of these initial terms, appointments shall be for four years and shall be made by the appointing authorities designated in subsection (b) of this section. No person shall serve more than two consecutive four-year terms plus any initial term of less than four years.

(d) Persons appointed to the Commission shall have significant experience in the prosecution of criminal or other cases subject to this Article or shall have demonstrated a strong commitment to the quality of prosecution and ensuring that justice is being sought on behalf of the people of North Carolina. No persons active in providing criminal defense services, including lawyers, public defenders, or sentencing services, or active employees of such persons may be appointed to, or serve on, the Commission. No active judicial officials, or active employees of such persons, may be appointed to, or serve on, the Commission.

(e) All members of the Commission are entitled to vote on any matters coming before the Commission unless otherwise provided by rules adopted by the Commission concerning voting on matters in which a member has, or appears to have, a financial or other personal interest.

(f) Each member of the Commission shall serve until a successor in office has been appointed. Vacancies shall be filled by appointment by the appointing authority for the unexpired term. Removal of Commission members shall be in accordance with policies and procedures adopted by the Commission.

(g) A quorum for purposes of conducting Commission business shall be a majority of the members of the Commission.

(h) The Commission shall elect a Commission chair, who shall be an active district attorney, from the members of the Commission for a term of two years.

(i) The Director of Prosecution Services shall attend all Commission meetings except those relating to removal or reappointment of the Director or allegations of misconduct by the Director. The Director shall not vote on any matter decided by the Commission.

(j) Commission members shall not receive compensation but are entitled to be paid necessary subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6 as applicable.

(k) The Commission shall hold its first meeting no later than September 15, 2009. All appointments to the Commission shall be made by the appointing authorities by September 1, 2009. An appointee of the Chief Justice, to be designated at the time of appointment, shall convene the first meeting. At that first meeting, the Commission shall elect its chair.

"**§ 7A-85. Responsibilities of the Commission on Prosecution Services.**

(a) The Commission shall have as its principal purpose the development and improvement of programs by which the Office of Prosecution Services provides oversight of criminal prosecution and related service.

(b) The Commission shall appoint the Director of Prosecution Services, who shall be chosen on the basis of training, experience, and other qualifications. The Commission shall consult with the Chief Justice and Director of the Administrative Office of the Courts in selecting a Director, but shall have final authority in making the appointment.

(c) The Commission shall develop uniform policies and procedures governing the provision of prosecutions services under this Article. The standards shall include:

(1) Standards for maintaining and operating of district attorney offices, including requirements regarding qualifications, training, and size of the legal and supporting staff;

(2) Standards prescribing minimum experience, training, and other qualifications for assistant district attorneys;

(3) Standards for assistant district attorney caseloads;

(4) Standards for the performance of assistant district attorneys;

(5) Standards for the independent, competent, and efficient representation of cases that present conflicts of interest, in both the trial and appellate courts;

(6) Standards for providing and compensating experts and others who provide services related to prosecution;

(7) Standards for qualifications and performance in capital cases, consistent with any rules adopted by the Supreme Court.

(d) The Commission shall determine the methods for delivering prosecution services under this Article in the most efficient and cost-effective manner without sacrificing the quality of justice.

(e) The Commission shall establish policies and procedures with respect to the distribution of funds appropriated under this Article, including rates of compensation for assistant district attorneys, schedules of allowable expenses, and the appointment and compensation of expert witnesses.

(g) The Commission shall approve and recommend to the General Assembly a budget for the Office of Prosecution Services.

(h) The Commission shall adopt such other rules and procedures as it deems necessary for the conduct of business by the Commission and the Office of Prosecution Services.

"**§ 7A-86. Director of Prosecution Services.**

(a) The Director of Prosecution Services shall be appointed by the Commission for a term of four years. The salary of the Director shall be set by the General Assembly in the Current Operations Appropriations Act, after consultation with the Commission. The Director may be removed during this term in the discretion of the Commission by a vote of two-thirds of all of the Commission members.

(b) The Director shall:

(1) Prepare and submit to the Commission a proposed budget for the Office of Prosecution Services, an annual report containing pertinent data on the operations, costs, and needs of the Office, and such other information as the Commission may require.

(2) Assist the Commission in developing rules and standards for the delivery of services under this Article.

(3) Administer and coordinate the operations of the Office and supervise compliance with standards adopted by the Commission.

(4) Subject to policies and procedures established by the Commission, hire such professional, technical, and support personnel as deemed reasonably necessary for the efficient operation of the Office of Prosecution Defense Services.

(5) Keep and maintain proper financial records for use in calculating the costs of the operations of the Office of Prosecution Services.

(6) Apply for and accept on behalf of the Office of Prosecution Services any funds that may become available from government grants, private gifts, donations, or bequests from any source.

(7) Perform other duties as the Commission may assign.

(c) In lieu of merit and other increment raises paid to regular State employees, the Director of Prosecution Services shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, nineteen and two-tenths percent (19.2%) after 20 years of service, and twenty-four percent (24%) after 25 years of service. "Service" means service as Director of Prosecution Services, a public defender, appellate defender, assistant public or appellate defender, district

attorney, assistant district attorney, justice or judge of the General Court of Justice, or clerk of superior court."

SECTION 2. Article 32 of Chapter 7A of the General Statutes is abolished.

SECTION 3. G.S. 7A-60(a2) reads as rewritten:

"(a2) Upon the convening of each regular session of the General Assembly and its reconvening in the even-numbered year, the ~~Administrative Office of the Courts~~ Office of Prosecution Services shall report its recommendations regarding the allocation of assistant district attorneys for the upcoming fiscal biennium and fiscal year to the General Assembly, including any request for additional assistant district attorneys. The report shall include the number of assistant district attorneys that the ~~Administrative Office of the Courts~~ Office of Prosecution Services recommends to be allocated to each prosecutorial district and the caseload and criteria on which each recommended allocation is based. Any reports required under this subsection shall be made to the Joint Legislative Commission of Governmental Operations, the House of Representatives and Senate Appropriations Subcommittees on Justice and Public, and the Fiscal Research Division."

SECTION 4. G.S. 7A-64 reads as rewritten:

"**§ 7A-64. Temporary assistance for district attorneys.**

(a) A district attorney may apply to the ~~Director of the Administrative Office of the Courts~~ Director of Prosecution Services to:

(1) Temporarily assign an assistant district attorney from another district, after consultation with the district attorney thereof, to assist in the prosecution of cases in the requesting district;

(2) Authorize the temporary appointment, by the requesting district attorney, of a qualified attorney to assist the requesting district attorney; or

(3) Enter into contracts with local governments for the provision of services by the State pursuant to G.S. 153A-212.1 or G.S. 160A-289.1.

(b) The ~~Director of the Administrative Office of the Courts~~ Director of Prosecution Services may provide this assistance only upon a showing by the requesting district attorney, supported by facts, that:

(1) Criminal cases have accumulated on the dockets of the superior or district courts of the district beyond the capacity of the district attorney and the district attorney's full-time assistants to keep the dockets reasonably current; or

(2) The overwhelming public interest warrants the use of additional resources for the speedy disposition of cases involving drug offenses, domestic violence, or other offenses involving a threat to public safety.

(c) The length of service and compensation of any temporary appointee or the terms of any contract entered into with local governments shall be fixed by ~~Director of the Administrative Office of the Courts~~ Director of Prosecution Services in each case. Nothing in this section shall be construed to obligate the General Assembly to make any appropriation to implement the provisions of this section or to obligate the ~~Administrative Office of the Courts~~ Office of Prosecution Services to provide the administrative costs of establishing or maintaining the positions or services provided for under this section. Further, nothing in this section shall be construed to obligate the ~~Administrative Office of the Courts~~ Office of Prosecution Services to maintain positions or services initially provided for under this section."

SECTION 5. G.S. 7A-65(d) reads rewritten:

"(d) In lieu of merit and other increment raises paid to regular State employees, an assistant district attorney shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of

service, nineteen and two-tenths percent (19.2%) after 20 years of service, and twenty-four percent (24%) after 25 years of service. "Service" means service as an assistant district attorney, district attorney, resource prosecutor, public defender, appellate defender, assistant public or appellate defender, justice or judge of the General Court of Justice, or clerk of superior court. For purposes of this subsection, "resource prosecutor" means a former assistant district attorney who has left the employment of the district attorney's office to serve in a specific, time-limited position with the ~~Conference of District Attorneys.~~ Commission on Prosecution Services."

SECTION 6. G.S. 7A-343(2) reads as rewritten:

"**§ 7A-343. Duties of Director.**

The Director is the Administrative Officer of the Courts, and the Director's duties include all of the following:

...

(2) Determine the state of the dockets and evaluate the practices and procedures of the courts, and make recommendations concerning the number of ~~judges, district attorneys,~~ judges and magistrates required for the efficient administration of justice.

...."

SECTION 7. G.S. 7A-347 reads as rewritten:

"**§ 7A-347. Assistants for administrative and victim and witness services.**

Assistant for administrative and victim and witness services positions are established under the district attorneys' offices. Each prosecutorial district is allocated at least one assistant for administrative and victim and witness services to be employed by the district attorney. The ~~Administrative Office of the Courts~~ Office of Prosecution Services shall allocate additional assistants to prosecutorial districts on the basis of need and within available appropriations. Each district attorney may also use any volunteer or other personnel to assist the assistant. The assistant is responsible for coordinating efforts of the law-enforcement and judicial systems to assure that each victim and witness is provided fair treatment under Article 45 of Chapter 15A, Fair Treatment for Victims and Witnesses and shall also provide administrative and legal support to the district attorney's office."

SECTION 8. G.S. 7A-348 reads as rewritten:

"**§ 7A-348. Training and supervision of assistants for administrative and victim and witness services.**

Pursuant to the provisions of G.S. 7A-413, the ~~Conference of District Attorneys~~ Commission on Prosecution Services shall:

(1) Assist in establishing uniform statewide training for assistants for administrative and victim and witness services; and

(2) Assist in the implementation and supervision of this program."

SECTION 9. G.S. 7B-1402(b)(21) reads as rewritten:

"(21) A district attorney, appointed by the President Pro Tempore of the Senate upon recommendation of the ~~President of the North Carolina Conference of District Attorneys;~~ Commission on Prosecution Services."

SECTION 10. G.S. 14-107.2(b) reads as rewritten:

"(b) Upon authorization by the ~~Administrative Office of the Courts,~~ Office of Prosecution Services, a district attorney may establish a program for the collection of worthless checks in cases that may be prosecuted under G.S. 14-107. The district attorney may establish a program for the collection of worthless checks in cases that would be punishable as misdemeanors, in cases that would be punishable as felonies, or both. The district attorney shall establish criteria for the types of worthless check cases that will be eligible under the program."

SECTION 11. G.S. 15A-622(h) reads as rewritten:

"(h) A written petition for convening of grand jury under this section may be filed by the district attorney, the district attorney's designated assistant, or a special prosecutor requested pursuant to G.S. 114-11.6, with the approval of ~~a committee of at least three members of the North Carolina Conference of District Attorneys,~~ the Commission on Prosecution Services, and with the concurrence of the Attorney General, with the Clerk of the North Carolina Supreme Court. The Chief Justice shall appoint a panel of three judges to determine whether to order the grand jury convened. A grand jury under this section may be convened if the three-judge panel determines that:

(1) The petition alleges the commission of or a conspiracy to commit a violation of G.S. 90-95(h) or G.S. 90-95.1, any part of which violation or conspiracy occurred in the county where the grand jury sits, and that persons named in the petition have knowledge related to the identity of the perpetrators of those crimes but will not divulge that knowledge voluntarily or that such persons request that they be allowed to testify before the grand jury; and

(2) The affidavit sets forth facts that establish probable cause to believe that the crimes specified in the petition have been committed and reasonable grounds to suspect that the persons named in the petition have knowledge related to the identity of the perpetrators of those crimes.

The affidavit shall be based upon personal knowledge or, if the source of the information and basis for the belief are stated, upon information and belief. The panel's order convening the grand jury as an investigative grand jury shall direct the grand jury to investigate the crimes and persons named in the petition, and shall be filed with the Clerk of the North Carolina Supreme Court. A grand jury so convened retains all powers, duties, and responsibilities of a grand jury under this Article. The contents of the petition and the affidavit shall not be disclosed. Upon receiving a petition under this subsection, the Chief Justice shall appoint a panel to determine whether the grand jury should be convened as an investigative grand jury.

A grand jury authorized by this subsection may be convened from an existing grand jury or grand juries authorized by subsection (b) of this section or may be convened as an additional grand jury to an existing grand jury or grand juries. Notwithstanding subsection (b) of this section, grand jurors impaneled pursuant to this subsection shall serve for a period of 12 months, and, if an additional grand jury is convened, 18 persons shall be selected to constitute that grand jury. At any time for cause shown, the presiding superior court judge may excuse a juror temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused."

SECTION 12. G.S. 15A-1475 reads as rewritten:

"**§ 15A-1475. Reports.**

Beginning January 1, 2008, and annually thereafter, the North Carolina Innocence Inquiry Commission shall report on its activities to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the State Judicial Council. The report may contain recommendations of any needed legislative changes related to the activities of the Commission. The report shall recommend the funding needed by the Commission, the district attorneys, and the State Bureau of Investigation in order to meet their responsibilities under S.L. 2006-184. Recommendations concerning the district attorneys or the State Bureau of Investigation shall only be made after consultations with the ~~North Carolina Conference of District Attorneys~~ Commission on Prosecution Services and the Attorney General."

SECTION 13. G.S. 120-226(c)(8) reads as rewritten:

"(8) One representative from the ~~Conference of District Attorneys of North Carolina,~~ Commission on Prosecution Services, as appointed by the Speaker of the House of Representatives."

SECTION 14. G.S. 143-661(b)(4)b. reads as rewritten:

"b. One member who is a district attorney or an assistant district attorney upon the recommendation of the Conference of District Attorneys of North Carolina, for a term beginning July 1, 1998, and expiring June 30, 1999. For the term beginning July 1, 2011, this appointment shall be made upon the recommendation of the Commission on Prosecution Services."

SECTION 15. G.S. 164-37(17) reads as rewritten:

"(17) The ~~President of the Conference of District Attorneys~~ Chair of the Commission on Prosecution Services or his designee."

SECTION 16. The Commission on Prosecution Services shall report on or before May 1, 2010, to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety regarding (i) a plan for the orderly transfer of budget and related authority from the Administrative Office of the Courts to the Commission on Prosecution Services, effective July 1, 2010; (ii) the rules, standards, and other regulations developed by the Commission for the delivery of prosecution services; and (iii) other matters for implementation of the provisions of this act.

SECTION 17. This act becomes effective July 1, 2010.

HOUSE BILL 786:
Office of Prosecution Services

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Appropriations	**Date:**	April 8, 2009
Introduced by:	Rep. Faison	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 786 establishes an Office of Prosecution Services to manage the budgetary aspects of the various District Attorney Offices.

[As introduced, this bill was identical to S816, as introduced by Sen. Brunstetter, which is currently in Senate Judiciary I.]

CURRENT LAW: North Carolina currently has a Conference of District Attorneys (Conference) that is statutorily created under Article 32 of Chapter 7A (these statutes are provided at the end of this summary). The Conference's current responsibilities are generally to assist and advise the district attorneys (DAs), but the budgeting and administrative responsibilities for the district attorney's offices across the State are handled by the Administrative Office of the Courts (AOC).

BILL ANALYSIS: House Bill 786 enacts a new Article 10, Prosecution Services Act, in Subchapter III of Chapter 7A of the General Statutes.

Section 1 creates the new Article 10 and establishes the Office of Prosecution Services and the Commission on Prosecution services.

G.S. 7A-81 sets forth the purpose of the Article as:

- To enhance oversight of criminal prosecution
- To improve quality of prosecution
- To establish uniform policies and procedures
- To provide reliable statistical information
- To deliver prosecution services efficiently and effectively

G.S. 7A-82 establishes the Office of Prosecution Services (Office), which is administered by the Director of Prosecution Services (Director) and includes the Commission on Prosecution Services (Commission) and is created within the Judicial Department. The Office is independent of the AOC, but AOC will provide certain administrative services such as purchasing & payroll. The budget of the Office shall be part of the Judicial Department budget and the AOC will assist the Commission in developing the Office's budget, but the Commission will have final authority in preparing the budget and representation before the General Assembly.

G.S. 7A-83 sets forth the responsibilities of the Office as follows:

- Establishing management and oversight of the budget for the DAs and disbursement of funds.
- Identifying programs and policies to create greater efficiencies and effectiveness in prosecution.

- Supporting the offices of DAs by training, technical assistance, publications, and related services.
- Providing DAs with information and technology needed.
- Providing, in extraordinary circumstances, assignment of special prosecutors and determine compensation if necessary.

G.S. 7A-84 establishes the Commission on Prosecution Services within the Office. The Commission consists of 13 members appointed as follows:

- 2 active DAs and 1 nonattorney, appointed by the Chief Justice of the NC Supreme Court (initial appointment 4 years)
- 2 active DAs and 1 nonattorney, appointed by the Governor (initial appointment 3 years)
- 1 active DA and 1 attorney, appointed by the General Assembly, upon recommendation of the President Pro Tempore (initial appointment 2 years for the DA, 1 year for the attorney)
- 1 active DA and 1 attorney, appointed by the General Assembly, upon recommendation of the Speaker (initial appointment 2 years for the DA, 1 year for the attorney)
- 1 attorney, appointed by the NC State Bar (initial appointment 2 years)
- The Attorney General
- The Secretary of Crime Control and Public Safety

After the initial terms, appointments are for 4 years. No person may serve more than 2 consecutive 4-year terms plus any initial term of less than 4 years. Appointees shall have significant experience in prosecution of criminal cases or demonstrated strong commitment to the quality of prosecution. No person active in providing criminal defense services, including lawyers, public defenders, or sentencing services, or active employees of such persons may be appointed to the Commission. No active judicial officials may be appointed.

The Commission shall hold its first meeting no later than September 15, 2009 and all appointments to the Commission shall be made by September 1, 2009.

G.S. 7A-85 sets forth the responsibilities of the Commission. The principal purpose is the development and improvement of programs by which the Office provides oversight of criminal prosecution and related services. The Commission shall appoint a Director of Prosecution Services.

The Commission shall develop uniform policies and procedures governing the provision of prosecution services, including standards for maintaining and operating DAs offices, standards for prescribing minimum experience and training requirements, as well as caseloads and performance, for assistant DAs, standards for representation of cases with conflicts of interest, standards for experts, and standards for capital cases.

The Commission shall establish policies for distribution of funds, including salaries of assistant DAs and compensation of expert witnesses and shall approve and recommend to the General Assembly a budget for the Office.

G.S. 7A-86 provides the Director shall:

- Prepare a proposed budget, an annual report, and other information
- Assist in developing rules and standards for delivery of services

- Administer and coordinate operations of the Office
- Hire personnel for the Office, as permitted by the Commission
- Keep financial records
- Apply for grants, gifts, donations and bequests that may be available

Section 2 of the bill repeals the current statutes creating the Conference of District Attorneys.

Sections 3 through 15 make conforming changes to:

- Replace the Conference with the Commission in:
    - G.S. 7A-65(d) – compensation and allowances of district attorneys and assistant district attorneys
    - G.S. 7A-348 – training and supervision of assistants for administrative and victim and witness services
    - G.S. 15A-622(h) – relates to a written petition for convening of a grand jury
    - G.S. 15A-1475 – consultation related to the report of the NC Innocence Inquiry Commission
    - G.S. 120-266(c)(8) – membership on the Legislative Commission on Methamphetamine Abuse
    - G.S. 164-37(17) – membership of the Sentencing Commission
    - G.S. 143-661(b)(4)b. – appointment of a DA to the Criminal Justice Information Network Governing Board
- Replace the AOC with the Office in:
    - G.S. 7A-60(a2) – allocation of assistant district attorneys
    - G.S. 7A-64 – temporary assistance for DAs
    - G.S. 7A-343(2) – determining the number of DAs
    - G.S. 7A-347 – assistants for administrative and victim and witness services
    - G.S. 14-107.2 – program for collection of worthless check cases

Section 16 requires the Commission to report on or before May 1, 2010, to the Chairs of the Senate and House Appropriations Committees and the Chairs of the JPS subcommittees regarding:

- A plan for the orderly transfer of budget and related authority from the AOC to the Commission, effective July 1, 2010
- The rules, standards, and other regulations developed by the Commission for the delivery of prosecution services
- Other matters for implementation of the provisions of this act.

EFFECTIVE DATE: This act becomes effective July 1, 2010.

SUBCHAPTER VIII. CONFERENCE OF DISTRICT ATTORNEYS.

Article 32.

Conference of District Attorneys.

§ 7A-411. Establishment and purpose.

There is created the Conference of District Attorneys of North Carolina, of which every district attorney in North Carolina is a member. The purpose of the Conference is to assist in improving the administration of justice in North Carolina by coordinating the prosecution efforts of the various district attorneys, by assisting them in the administration of their offices, and by exercising the powers and performing the duties provided for in this Article. (1983, c. 761, s. 152.)

§ 7A-412. Annual meetings; organization; election of officers.

(a) Annual Meetings. – The Conference shall meet annually at a time and place selected by the President of the Conference.

(b) Election of Officers. – Officers of the Conference are a President, a President-elect, a Vice-president, and other officers from among its membership that the Conference may designate in its bylaws. Officers are elected for one-year terms at the annual Conference, and take office on July 1 immediately following their election.

(c) Executive Committee. – The Executive Committee of the Conference consists of the President, the President-elect, the Vice-president, and four other members of the Conference. One of these four members shall be the immediate past president if there is one and if he continues to be a member.

(d) Organization and Functioning; Bylaws. – The bylaws may provide for the organization and functioning of the Conference, including the powers and duties of its officers and committees. The bylaws shall state the number of members required to constitute a quorum at any meeting of the Conference or the Executive Committee. The bylaws shall set out the procedure for amending the bylaws.

(e) Calling Meetings; Duty to Attend. – The President or the Executive Committee may call a meeting of the Conference upon 10 days' notice to the members, except upon written waiver of notice signed by at least three-fourths of the members. A member should attend each meeting of the Conference and the Executive Committee of which he is given notice. Members are entitled to reimbursement for travel and subsistence expenses at the rate applicable to State employees. (1983, c. 761, s. 152.)

§ 7A-413. Powers of Conference.

(a) The Conference may:

(1) Cooperate with citizens and other public and private agencies to promote the effective administration of criminal justice.

(2) Assist prosecutors in the effective prosecution and trial of criminal offenses, and develop an advisory trial manual.

(3) Develop advisory manuals to assist prosecutors in the organization and administration of their offices, case management, calendaring, case tracking, filing, and office procedures.

(4) Cooperate with the Administrative Office of the Courts and the School of Government at the University of North Carolina at Chapel Hill concerning education and training programs for prosecutors and staff.

(b) The Conference may not adopt rules pursuant to Chapter 150B of the General Statutes. (1983, c. 761, s. 152; 1987, c. 827, s. 1; 2006-264, s. 29(b).)

§ 7A-414. Executive Secretary; clerical support.

The Conference may employ an executive secretary and any necessary supporting staff to assist it in carrying out its duties. (1983, c. 761, s. 152.)

H786-SMSA-28(e1) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 786 A BILL TO BE ENTITLED AN ACT TO ESTABLISH AN OFFICE OF PROSECUTION SERVICES TO MANAGE THE BUDGETARY ASPECTS OF THE VARIOUS DISTRICT ATTORNEY OFFICES.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on APPROPRIATIONS.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 595

Short Title:	Study High-Speed Internet/Underserved Cities.	(Public)
Sponsors:	Representatives K. Alexander, Faison, Jones (Primary Sponsors); M. Alexander, Bell, Carney, Cotham, Current, Farmer-Butterfield, E. Floyd, Hughes, Jackson, Lucas, Mackey, Michaux, Pierce, Samuelson, Tarleton, Tolson, and Wainwright.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Rules, Calendar, and Operations of the House.	

March 16, 2009

A BILL TO BE ENTITLED

AN ACT CREATING THE JOINT LEGISLATIVE STUDY COMMITTEE ON HIGH-SPEED INTERNET IN UNDERSERVED URBAN AREAS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) There is created the Joint Legislative Study Committee on High-Speed Internet in Underserved Urban Areas (Committee).

SECTION 1.(b) The Committee shall consist of 16 members, appointed as follows:

(1) Eight members appointed by the Speaker of the House of Representatives.

(2) Eight members appointed by the President Pro Tempore of the Senate.

The Speaker of the House of Representatives shall designate one Representative as Cochair, and the President Pro Tempore of the Senate shall designate one Senator as Cochair. Vacancies on the Committee shall be filled by the same appointing authority that made the initial appointment. The Committee shall meet on the call of its House and Senate Cochairs. A quorum of the Committee shall be a majority of its members.

SECTION 2. The Committee shall examine the availability of high-speed Internet access in low-wealth areas of the State having a population of 100,000 or more according to the most recent federal decennial census. In conducting its study, the Committee may:

(1) Consider whether underserved urban areas have adequate access to high-speed Internet and offer proposals to assure access to high-speed Internet in underserved urban areas.

(2) Examine the impact of high-speed Internet access on education, small businesses, and medical services.

(3) Evaluate the economic impact of high-speed Internet access for individuals, cities, counties, and the State of North Carolina.

(4) Identify technical issues associated with providing high-speed Internet access, including the availability of necessary equipment.

(5) Identify the potential costs to Internet providers.

(6) Examine rate considerations, including whether customers will pay the total costs or whether the costs will be spread through the rate-making process.

(7) Explore the impact of recent legislation allowing phone companies to provide cable service and high-speed Internet access.

(8) Study any other issue the Committee deems relevant.

SECTION 3. While in the discharge of its official duties, the Committee may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. Members of the Committee shall receive per diem, subsistence, and travel allowance as provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate. With the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work. The House of Representatives' and Senate's Directors of Legislative Assistants shall assign clerical staff to the Committee. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Committee may meet in the Legislative Building or Legislative Office Building and may meet at various locations around the State in order to promote greater public participation in its deliberations.

SECTION 4. The Committee shall submit a final report to the 2011 Session of the General Assembly and may submit interim reports as it deems necessary. The Committee shall terminate upon filing its final report or upon the convening of the 2011 General Assembly, whichever comes first.

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

HOUSE BILL 595:
Study High-Speed Internet/Underserved Cities

2009-2010 General Assembly

Committee:	Ways and Means/Broadband Connectivity, if favorable, Rules, Calendar, and Operations of the House	**Date:**	March 31, 2009
Introduced by:	Reps. K. Alexander, Faison, Jones	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 595 creates a Joint Legislative Study Committee on High-Speed Internet in Underserved Urban Areas. The Committee would submit its final report to the 2011 Session of the General Assembly.

BILL ANALYSIS: House Bill 595 creates a Joint Legislative Study Committee on High-Speed Internet in Underserved Urban Areas. The Committee would consist of 16 members appointed by the Speaker of the House and the President Pro Tempore of the Senate. The Committee would meet upon the call of the cochairs to examine the availability of high-speed Internet access in low-wealth areas of the State having a population of 100,000 or more. The Committee would be authorized to submit interim reports, and would expire upon submitting its final report to the 2011 Session of the General Assembly.

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

H595-SMRV-22(e1) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 595 A BILL TO BE ENTITLED AN ACT CREATING THE JOINT LEGISLATIVE STUDY COMMITTEE ON HIGH-SPEED INTERNET IN UNDERSERVED URBAN AREAS.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on RULES, CALENDAR, AND OPERATIONS OF THE HOUSE.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 722

Short Title:	Regulate Sales of Glass Vials.	(Public)
Sponsors:	Representatives Hilton, Frye (Primary Sponsors); and Faison.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary I.	

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT GLASS VIALS THAT ARE A CERTAIN LENGTH AND DIAMETER THAT MAY BE USED AS DRUG PARAPHERNALIA SHALL BE SOLD FROM BEHIND THE COUNTER AND TO REQUIRE THAT A PURCHASER PROVIDE CERTAIN IDENTIFYING INFORMATION WHEN PURCHASING THESE PRODUCTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 5F.

"Control of Certain Products That May Be Used as Drug Paraphernalia.

"**§ 90-113.80. Restriction on sales of certain products that may be used as drug paraphernalia.**

(a) The following definitions apply in this section:

(1) Glass vial. – Tubes of glass, including those that often hold novelty items, that are two to six inches long and one-eighth inch to three-fourths inch in diameter that may be used as drug stems.

(2) Retailer. – An individual or entity that is the general owner of an establishment where glass vials are available for sale.

(b) No glass vial shall be offered for retail sale by self-service. These products shall be stored and sold behind the counter when sold in any establishment. The retailer shall require every purchaser of a glass vial to furnish photo identification, to enter his or her name and address in a record of sale, and to sign the record of sale attesting to the validity of the information.

(c) The retailer shall maintain the record of sale of the glass vial to the consumer for a period of two years from the date of each transaction. The record shall be readily available within 48 hours of the time of the transaction for inspection by an authorized official of a federal, State, or local law enforcement agency. The retailer may destroy the information after two years from the date of the transactions.

(d) A retailer shall require that employees of the establishment involved in the sale of glass vials be trained in the requirements of this section, and the retailer shall have a duty to supervise employees in complying with the provisions of this section.

(e) This section does not apply to the sale of plastic vials.

"**§ 90-113.81. Penalties.**

If a retailer willfully and knowingly violates the provisions of G.S. 90-113.80, the retailer shall be guilty of a Class 3 misdemeanor for the first offense and a Class 2 misdemeanor for a second offense. A retailer convicted of a third or subsequent offense occurring on the same

premises or in another establishment owned or operated by the retailer shall be guilty of a Class 1 misdemeanor.

"**§ 90-113.82. Immunity.**

A retailer or an employee of the retailer who, reasonably and in good faith, reports to any law enforcement agency any alleged criminal activity related to the sale or purchase of glass vials, or who refuses to sell a glass vial to a person reasonably believed to be purchasing one of those products to be used as drug paraphernalia, is immune from civil liability for that conduct except in cases of willful misconduct. No retailer shall retaliate in any manner against any employee of the establishment for a report made in good faith to any law enforcement agency concerning alleged criminal activity related to the sale or purchase of glass vials."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

HOUSE BILL 722:
Regulate Sales of Glass Vials

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	April 8, 2009
Introduced by:	Reps. Hilton, Frye	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H722-CSSA-10[v.5]		

SUMMARY: ***The Proposed Committee Substitute for House Bill 722 provides that glass tubes that are a certain length and diameter, that may be used as drug paraphernalia, shall be sold from behind the counter and requires that a purchaser provide certain identifying information when purchasing these products.***

BILL ANALYSIS: The PCS for House Bill 722 amends Chapter 90 of the General Statutes by creating a new Article 5F entitled "Control of Certain Products That May Be Used as Drug Paraphernalia".

Glass Tube is defined as tubes of glass that are 2 to 7 inches long and 1/8 inch to ¾ inch in diameter that may be used as drug stems, including but not limited to: glass tubes or vials that often hold novelty items, glass pens, and any object with a glass tube capable of being disassembled.

The bill prohibits glass tubes from being sold self-service and requires glass tubes to be stored behind the counter. Additionally, each the retailer must require each purchaser to provide photo identification, name & address and to sign the record of sale.

The retailer must maintain the records of sale for at least 48 months & must allow inspection of the records by an authorized official of a federal, State, or local law enforcement agency.

A willful and knowing violation is:

- Class 3 misdemeanor – first offense
- Class 2 misdemeanor – second offense
- Class 1 misdemeanor – third or subsequent offense

The bill provides immunity from civil liability, except for willful misconduct, for any retailer or employee that reasonably & in good faith reports any alleged criminal activity related to the sale or purchase of glass tubes to law enforcement, or refuses to sell a glass tube to a person reasonably believed to be purchasing one of those products to be used as drug paraphernalia. No retailer shall retaliate against an employee for a report made in good faith to a law enforcement agency.

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 722
PROPOSED COMMITTEE SUBSTITUTE H722-CSSA-10 [v.5]

4/8/2009 10:39:55 AM

Short Title: Regulate Sales of Glass Vials. (Public)

Sponsors:

Referred to:

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT GLASS TUBES THAT ARE A CERTAIN LENGTH AND DIAMETER THAT MAY BE USED AS DRUG PARAPHERNALIA SHALL BE SOLD FROM BEHIND THE COUNTER AND TO REQUIRE THAT A PURCHASER PROVIDE CERTAIN IDENTIFYING INFORMATION WHEN PURCHASING THESE PRODUCTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 5F.

"Control of Certain Products That May Be Used as Drug Paraphernalia.

"**§ 90-113.80. Restriction on sales of certain products that may be used as drug paraphernalia.**

(a) The following definitions apply in this section:

(1) Glass tube. – Tubes of glass that are two to seven inches long and one-eighth inch to three-fourths inch in diameter that may be used as drug stems, including but not limited to: glass tubes or vials that often hold novelty items, glass pens, and any object with a glass tube capable of being disassembled.

(2) Retailer. – An individual or entity that is the general owner of an establishment where glass tubes are available for sale.

(b) No glass tube shall be offered for retail sale by self-service. These products shall be stored and sold behind the counter when sold in any establishment. The retailer, or an employee of the retailer, shall require every purchaser of a glass tube to furnish photo identification, to enter his or her name and address in a record of sale, and to sign the record of sale attesting to the validity of the information.

(c) The retailer shall maintain the record of sale of the glass tube to the consumer for a period of two years from the date of each transaction. The record shall be readily available within 48 hours of the time of the transaction for inspection by an authorized official of a federal, State, or local law enforcement agency. The retailer may destroy the information after two years from the date of the transactions.

(d) A retailer shall require that employees of the establishment involved in the sale of glass tubes be trained in the requirements of this section, and the retailer shall have a duty to supervise employees in complying with the provisions of this section.

(e) This section does not apply to the sale of plastic tubes.

"**§ 90-113.81. Penalties.**

A retailer, or an employee of the retailer, who, willfully and knowingly violates the provisions of G.S. 90-113.80, shall be guilty of a Class 3 misdemeanor for the first offense, a Class 2 misdemeanor for a second offense, and a Class 1 misdemeanor for a third or subsequent offense.

"**§ 90-113.82. Immunity.**

A retailer, or an employee of the retailer, who, reasonably and in good faith, reports to any law enforcement agency any alleged criminal activity related to the sale or purchase of glass tubes, or who refuses to sell a glass tube to a person reasonably believed to be purchasing one of those products to be used as drug paraphernalia, is immune from civil liability for that conduct except in cases of willful misconduct. No retailer shall retaliate in any manner against any employee of the establishment for a report made in good faith to any law enforcement agency concerning alleged criminal activity related to the sale or purchase of glass tubes."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed, and glass tubes sold, on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 722 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT GLASS VIALS THAT ARE A CERTAIN LENGTH AND DIAMETER THAT MAY BE USED AS DRUG PARAPHERNALIA SHALL BE SOLD FROM BEHIND THE COUNTER AND TO REQUIRE THAT A PURCHASER PROVIDE CERTAIN IDENTIFYING INFORMATION WHEN PURCHASING THESE PRODUCTS.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 136

Short Title:	DOT/Fiber-Optic Cable.	(Public)
Sponsors:	Representatives Faison, Tolson, Bryant, West (Primary Sponsors); K. Alexander, M. Alexander, Allred, E. Floyd, Hurley, Jones, Lucas, Mobley, Tarleton, and Wray.	
Referred to:	Ways & Means/Broadband Connectivity, if favorable, Transportation.	

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE AUTHORITY OF THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION TO LOCATE AND ACQUIRE RIGHT-OF-WAY FOR THE LOCATION, ABOVE OR BELOW GROUND, OF FIBER-OPTIC CABLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-18(2) reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

The said Department of Transportation is vested with the following powers:

...

(2) To take over and assume exclusive control for the benefit of the State of any existing county or township roads, and to locate and acquire rights-of-way for any new roads that may be necessary for a State highway system, and subject to the provisions of G.S. 136-19.5(a) and (b) also locate and acquire such additional rights-of-way as may be necessary for the present or future relocation or initial location, above or below ground, of telephone, telegraph, broadband communications, electric and other lines, as well as gas, water, sewerage, oil and other pipelines, to be operated by public utilities as defined in G.S. 62-3(23) and which are regulated under Chapter 62 of the General Statutes, or by other providers of broadband communications, or by municipalities, counties, any entity created by one or more political subdivisions for the purpose of supplying any such utility services, electric membership corporations, telephone membership corporations, or any combination thereof, with full power to widen, relocate, change or alter the grade or location thereof and to change or relocate any existing roads that the Department of Transportation may now own or may acquire; to acquire by gift, purchase, or otherwise, any road or highway, or tract of land or other property whatsoever that may be necessary for a State highway system and adjacent utility rights-of-way: Provided, all changes or alterations authorized by this subdivision shall be subject to the provisions of G.S. 136-54 to 136-63, to the extent that said sections are applicable: Provided, that nothing in this Chapter shall be construed to authorize or permit the Department of Transportation to allow or pay anything to any county, township, city or town, or to any board of commissioners or governing body thereof, for any existing road or part of any road heretofore constructed by any such county,

township, city or town, unless a contract has already been entered into with the Department of Transportation.

...."

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

HOUSE BILL 136: DOT/Fiber-Optic Cable

2009-2010 General Assembly

Committee:	House Ways & Means / Broadband Connectivity, if favorable, Transportation	**Date:**	February 24, 2009
Introduced by:	Reps. Faison, Tolson, Bryant, West	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House bill 136 clarifies the Department of Transportation can locate and acquire rights-of-way for all broadband communications lines.***

CURRENT LAW: Currently, DOT is authorized to locate and acquire, subject to a utilities agreement, additional rights-of-way as may be necessary for the present or future relocation or initial location, above or below ground, of

- "telephone, telegraph, **broadband communications**, electric and other lines, as well as gas, water, sewerage, oil and other pipelines, to be operated by public utilities as defined in G.S. 62-3(23) and which are regulated under Chapter 62 of the General Statutes, or by municipalities, counties, any entity created by one or more political subdivisions for the purpose of supplying any such utility services, electric membership corporations, telephone membership corporations, or any combination thereof."

S.L. 2008-180 amended the powers of the Department of Transportation to authorize the Department to locate and acquire rights-of-way for the present or future relocation or initial location, above or below ground, of *broadband communications lines*.

This authority is limited to acquiring rights-of-way for broadband communications lines operated by:

- Public utilities as defined in Chapter 62 and governed by the Utilities Commission.
- Municipalities.
- Counties.
- Entities created by governmental units to provide utility services.
- Electric membership corporations.
- Telephone membership corporations.
- Any combination of the above entities.

BILL ANALYSIS: This act clarifies DOT may acquire rights-of-way for broadband communications lines for all providers of broadband communication lines.

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

H136-SMTD-1(e1) v3

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 136 A BILL TO BE ENTITLED AN ACT TO EXPAND THE AUTHORITY OF THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION TO LOCATE AND ACQUIRE RIGHT-OF-WAY FOR THE LOCATION, ABOVE OR BELOW GROUND, OF FIBER-OPTIC CABLE.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on TRANSPORTATION.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

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

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

HOUSE BILL 532

Short Title:	E-NC Connectivity/Economic Development Funds.	(Public)
Sponsors:	Representatives Tolson, Rapp, Lucas, Wilkins (Primary Sponsors); Faison, McLawhorn, Spear, Tarleton, and E. Warren.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Appropriations.	

March 12, 2009

A BILL TO BE ENTITLED

AN ACT APPROPRIATING FUNDS TO THE E-NC AUTHORITY TO SUPPORT CONNECTIVITY INITIATIVES AND TO ADVANCE TECHNOLOGY-BASED ECONOMIC DEVELOPMENT THROUGHOUT THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Operations, Research and Coordination. – Under Session Law 2003-425, the e-NC Authority has a mandate to be the Internet planning and policy body for the State. Therefore, there is appropriated from the General Fund to the e-NC Authority the additional sum of five hundred and five thousand dollars ($505,000) in recurring funds for the 2009-2010 fiscal year to continue its operational, advocacy, and research functions and assistance to communities for broadband deployment. These funds will be in addition to the four hundred ninety-five thousand dollars ($495,000) the Authority currently receives from recurring funding from the State budget. These funds will allow the e-NC Authority to continue its efforts statewide, serving as the primary advocate in North Carolina for universal high-speed Internet access and the economic growth potential possible through expanded broadband, through continuation of e-NC's operations and its work on technology-based economic development to create jobs in North Carolina. Since its inception eight years ago the e-NC Authority has received two million three hundred ninety-five dollars ($2,395,000) in State operating support, creating an economic impact of more than three billion dollars ($3,000,000,000) in its work to increase broadband access, using the U.S. Bureau of Economic Analysis metrics, and has seen more than 1,645 jobs directly created through the e-NC Business and Technology Telecenters (BTTs) since 2002. In addition, this local community impact by the Business and Technology Telecenters has seen more than two hundred twenty-one million dollars ($221,000,000) in direct revenue impact to the economy of the seven counties that the BTTs are located in, as well as direct to the State tax revenues of more than fourteen million five hundred thousand dollars ($14,500,000).

SECTION 2. Connectivity Incentive Grants – State and Federal. – There is appropriated from the General Fund to the e-NC Authority the sum of twelve million five hundred thousand dollars ($12,500,000) in nonrecurring funds for the 2009-2010 fiscal year to be used to bring communities up to the point where at least seventy-five percent (75%) of the households in all 100 counties will have the ability to access a high-speed Internet connection. These funds will allow the e-NC Authority to then work toward increasing high-speed Internet access in all North Carolina counties up to 80 percent (80%), then 90 percent (90%), and eventually, up to 100 percent (100%). These funds shall be granted through a formal request for proposals (RFP) process with a provider match required when appropriate. Up to five (5%) of this connectivity funding may be designated for grant administration. In addition, these funds

may be used by the e-NC Authority to assist community, public-private, and nonprofit entities who are required to provide matching funds to qualify for federal broadband stimulus monies available from the federal government.

SECTION 3. Business and Technology Telecenter (BTT) Grants. – There is appropriated from the General Fund to the e-NC Authority the sum of one million dollars ($1,000,000) in nonrecurring funds for the 2009-2010 fiscal year to continue support of its Business and Technology Telecenter program and to establish up to two new centers in underserved areas of the State. All grants to establish new centers shall be awarded through a competitive bidding process. The Telecenter program would then include:

(1) Blue Ridge Business Development Center in Sparta, Alleghany County.
(2) New Ventures Business Development, Inc., in Wadesboro, Anson County.
(3) Tri-County Community College TeleCenter in Murphy, Cherokee County.
(4) Northeast Technology and Business Center in Williamston, Martin County.
(5) The Roanoke Center in Rich Square, Northampton County.
(6) Rockingham County Business and Technology Center in Wentworth, Rockingham County.
(7) Foothills Connect Business and Technology Center in Rutherfordton, Rutherford County.
(8) New Telecenter, New town, New county.
(9) New Telecenter, New town, New county.

Three million one hundred ninety-two thousand five hundred dollars ($3,192,500) in State funding has been awarded for e-NC Business and Technology Telecenter grants since the inception of the BTT program. The economic impact of the BTTs without economic multipliers being applied has been more than two hundred twenty-one million dollars ($221,000,000) in direct dollar impact to the seven counties.

SECTION 4. Public Access & Digital Inclusion Grants. – There is appropriated from the General Fund to the e-NC Authority the sum of one million five hundred thousand dollars ($1,500,000) in nonrecurring funds for the 2009-2010 fiscal year to support public Internet access sites in communities with low levels of connectivity and to provide digital literacy programs and access to communities with low participation rates in the digital economy. These funds shall be granted through a formal request for proposals (RFP) process. These funds will be utilized to assist the public access centers refresh the technology equipment they have been using for the past five years. Their current equipment shall be refurbished and utilized by the local public access center or local school in a lending program for students who do not have a computer to take home from school.

SECTION 5. This act becomes effective July 1, 2009.

HOUSE BILL 532: E-NC Connectivity/Economic Development Funds

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Appropriations	**Date:**	March 31, 2009
Introduced by:	Reps. Tolson, Rapp, Lucas, Wilkins	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 532 appropriates $15.5 million from the General Fund to the e-NC Authority for the 2009-2010 fiscal year. The bill would provide additional funding for general operations of the Authority, support efforts to increase the availability of internet connectivity in underserved areas of the state, provide for expansion of the business and technology telecenters program, and support public Internet access sites in certain communities.***

CURRENT LAW: The e-NC Authority was created by the N.C. General Assembly to continue the work of the Rural Internet Access Authority as the Internet planning and policy body for the State.

BILL ANALYSIS: House Bill 532 makes the following appropriations from the General Fund to the e-NC Authority for the 2009-2010 fiscal year:

- $505,000 in recurring funds to continue its operational, advocacy, and research functions and assistance to communities for broadband deployment.
- $12,500,000 in nonrecurring funds to be used to bring communities up to the point where at least seventy-five percent (75%) of the households in all 100 counties will have the ability to access a high-speed Internet connection.
- $1,000,000 in nonrecurring funds to continue support of e-NC's Business and Technology Telecenter program and to establish up to two new centers in underserved areas of the State.
- $1,500,000 in nonrecurring funds for the 2009-2010 fiscal year to support public Internet access sites in communities with low levels of connectivity and to provide digital literacy programs and access to communities

EFFECTIVE DATE: The bill would become effective July 1, 2009.

H532-SMRV-23(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 532

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

H532-ARV-4 [v.1]

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

Date _____ ,2009

Representative Tillis

moves to amend the bill on page 1, lines 7-8,
by deleting the phrase "the Internet planning and policy for the State." And substituting "the Internet access policy planning body of the State for rural and urban distressed areas."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 532 A BILL TO BE ENTITLED AN ACT APPROPRIATING FUNDS TO THE E-NC AUTHORITY TO SUPPORT CONNECTIVITY INITIATIVES AND TO ADVANCE TECHNOLOGY-BASED ECONOMIC DEVELOPMENT THROUGHOUT THE STATE.

☒ With a favorable report, as amended, and recommendation that the bill be re-referrred to the Committee on APPROPRIATIONS.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

_____ The bill/resolution is (ordered engrossed and) re-referred to the Committee on _____.

_____ On motion of Representative_____, Committee Amendment No.(s) ___ is/are adopted by EV (_____).

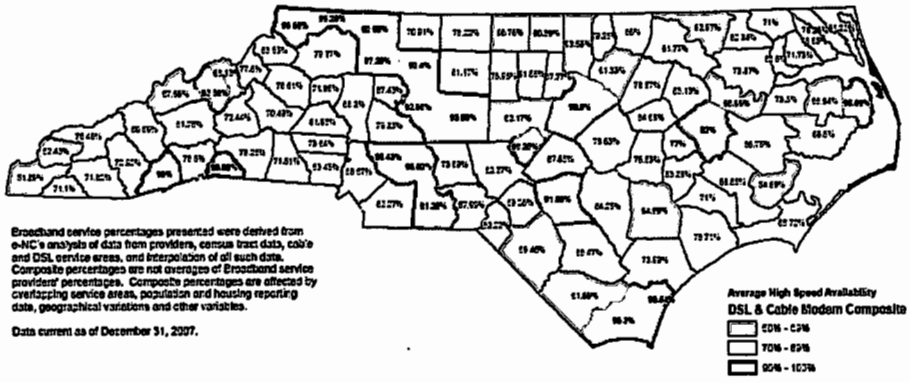
The e-NC Authority

Request for

Legislative Action

2009 Session

2007 High-Speed Internet Access: DSL and Cable Composite



Broadband Internet is a pillar of the emerging United States economic recovery plan. Enabling broadband will create jobs in the short-term and spur technology-based economic growth and competitiveness in the long-term. In the e-NC Authority, North Carolina has an established vehicle for planning and implementing the strategic policies and investments that are needed to ensure that the promise that broadband embodies is available throughout the state of North Carolina. The e-NC Authority was created by the N.C. General Assembly (S.L. 2003-425) as the mandated Internet-planning body for the state of North Carolina. The e-NC Commission requests that the e-NC Authority assist in the administration and planning of any state or federal funding for the expansion of broadband services.[1] An expansion budget of $15, 505,000 is requested to support the following priority initiatives that are critical to successfully enabling technology-based economic recovery in North Carolina.

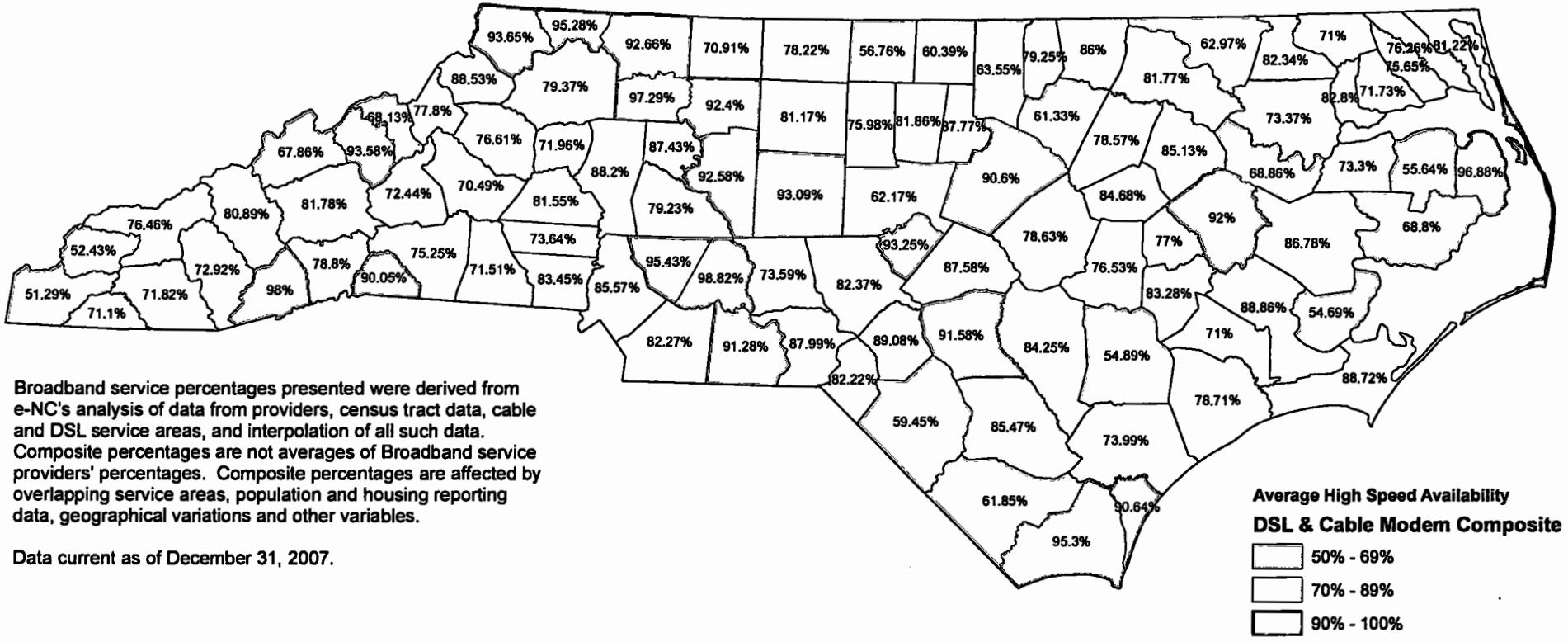
Operations and Research - $505,000 recurring: An expert staff of 5 full-time and 3 part-time professionals works with all communities, rural and urban, to research telecommunications infrastructure, improve connectivity and digital literacy, implement model connectivity and economic development programs, and interface with federal agencies engaged in telecommunications issues. **Work by this group cannot continue at full speed without this supplement to the existing $495,000 in recurring funds.**

Broadband Deployment Incentive Grants - $12.5 million non-recurring: In a global economy entrepreneurs and small and large businesses have to be networked at broadband speeds to remain competitive. Public-private partnerships matching federal and state funds with those of service providers will enable the critical expansion of broadband infrastructure to all unserved and underserved counties and communities.

Digital Inclusion and Public Access - $1.5 million non-recurring: Maximizing competitiveness requires that all citizens have the skills to operate in a connected world that increasingly delivers critical educational, health and, public safety services via broadband Internet. With the economic downturn a growing number of citizens and businesses are turning to underfunded and over-utilized public Internet facilities to maintain Internet access to services or to their customers and suppliers. Investment is needed to ensure digital skills and public access.

Business and Technology Telecenters (BTTs)- $1 million non-recurring: Two additional BTTs are needed to serve regions of the state that lack sufficient hands-on support services to empower technology-based economic development. The new BTTs would be awarded thorough a competitive bidding process that would bring to their regions a best-practice model that to date has created 1,675 jobs at 7 existing BTTs located in Tier 1 counties.

2007 High-Speed Internet Access: DSL and Cable Composite



Broadband service percentages presented were derived from e-NC's analysis of data from providers, census tract data, cable and DSL service areas, and interpolation of all such data. Composite percentages are not averages of Broadband service providers' percentages. Composite percentages are affected by overlapping service areas, population and housing reporting data, geographical variations and other variables.

Data current as of December 31, 2007.

2007 Connectivity Challenged

	County	Composite Hholds		County	Composite Hholds
	State	**83.33%**			
	Jones **Note 1**	41.83%		Wilkes	79.37%
	Warren **Note 1**	50.65%		Haywood	80.89%
1	Cherokee	51.29%		**Guilford**	**81.17%**
2	Graham	52.43%		Currituck	81.22%
	Gates **Note 1**	54.47%		**Catawba**	**81.55%**
3	Pamlico	54.69%		Halifax	81.77%
4	Duplin	54.89%		**Buncombe**	**81.78%**
5	Tyrrell	55.64%		**Orange**	**81.86%**
	Greene **Note 1**	56.68%		Scotland	82.22%
6	Caswell	56.76%		Union	82.27%
7	Robeson	59.45%		Hertford	82.34%
8	Person	60.39%		Moore	82.37%
9	Franklin	61.33%		Chowan	82.80%
10	Columbus	61.85%		Lenoir	83.28%
11	Chatham	62.17%		**Gaston**	**83.45%**
12	Northampton	62.97%		Sampson	84.25%
13	Granville	63.55%		Wilson	84.68%
14	Madison	67.86%		Edgecombe	85.13%
15	Mitchell	68.13%		Bladen	85.47%
16	Hyde	68.80%		**Mecklenburg**	**85.57%**
17	Martin	68.86%		Beaufort	86.78%
	Burke	70.49%		Davie	87.43%
	Stokes	70.91%		Harnett	87.58%
	Clay	71.10%		**Durham**	**87.77%**
	Cleveland	71.51%		Richmond	87.99%
	Perquimans	71.73%		Iredell	88.20%
	Macon	71.82%		Watauga	88.53%
	Alexander	71.96%		Carteret	88.72%
	McDowell	72.44%		Craven	88.86%
	Jackson	72.92%		Hoke	89.08%
	Washington	73.30%		Polk	90.05%
	Bertie	73.37%		**Wake**	**90.60%**
	Montgomery	73.59%		**New Hanover**	**90.64%**
	Lincoln	73.64%		Anson	91.28%
	Pender	73.99%		**Cumberland**	**91.58%**
	Rutherford	75.25%		Pitt	92.00%
	Pasquotank	75.65%		**Forsyth**	**92.40%**
	Alamance	**75.98%**		**Davidson**	**92.58%**
	Camden	76.26%		Surry	92.66%
	Swain	76.46%		Randolph	93.09%
	Wayne	76.53%		Lee	93.25%
	Caldwell	76.61%		Yancey	93.58%
	Avery	77.80%		Ashe	93.65%
	Rockingham	78.22%		Alleghany	95.28%
	Nash	78.57%		Brunswick	95.30%
	Johnston	78.63%		**Cabarrus**	**95.43%**
	Onslow	78.71%		Dare	96.88%
	Henderson	78.80%		Yadkin	97.29%
	Rowan	**79.23%**		Transylvania	98.00%
	Vance	79.25%		Stanly	98.82%

	Note 1	07 e-NC Authority grant brought all above 70%	Data from e-NC Authority
	Bold	Urban County	www.e-nc.org
		Connectivity challenged <70% access	12/4/2008

*

Broadband service percentages presented were derived from e-NC's analysis of data from providers, census tract data, cable and DSL service areas, and interpolation of all such data. Composite percentages are not averages of Broadband service providers' percentages. Composite percentages are affected by overlapping service areas, population and housing reporting data, geographical variations and other variables.

Where Are We Now?

Internet Usage is Moving Faster than you Think...

Internet Penetration Demographic Percentage of ALL North Carolina Households That Have Home Internet Access				
	1999	**2002**	**2004**	**2008**
Overall	**36%**	**52%**	**59%**	**70%**

Table 2, p. 10 of 2008
Citizen Survey

During this period above, the proportion of all NC homes subscribing to Internet access has increased from 36 to 70 %. (Note: figures include all access speeds, including dial-up.) Nevertheless, while it is still far from universal, in less than a decade the Internet has become a common part of our everyday lives.

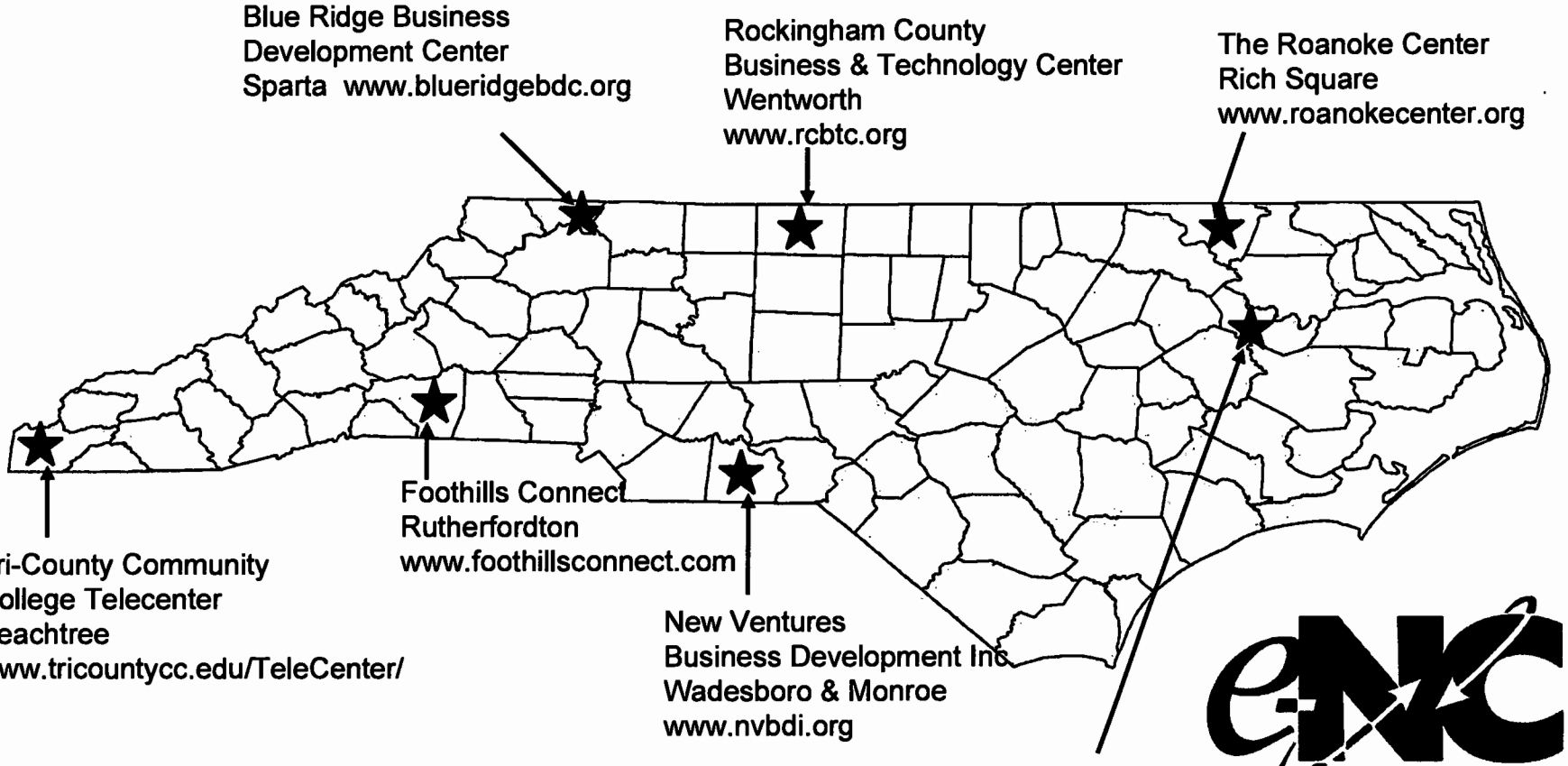
e-NC recommends aggressive goals in terms of availability of broadband Internet access.

e-NC Recommended Goals on Access and Bandwidth			
	***2012**	**2015**	***2018**
For NC Citizens	**5 Mbps**	**45 Mbps**	**100 Mbps**

* *From e-NC's Broadband Internet Action Plan, submitted to the NCGA in Jan. 2009.*

www.e-NC.org

e-NC Business & Technology Telecenters



e-NC

http://www.e-NC.org

HOUSE BILL 578

Short Title:	Partition Sales/Commrs., Sellers, Buyers.	(Public)
Sponsors:	Representatives Bryant, Michaux, Allen, Harrison (Primary Sponsors); Hall, Lucas, Parmon, Pierce, Wainwright, and Womble.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary I.	

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT ATTORNEYS REPRESENTING PARTIES IN A PARTITION ACTION FROM SERVING AS COMMISSIONERS TO DIVIDE THE LAND, EXCEPT BY CONSENT OF THE PARTIES, AND TO SPECIFY WHO MAY NOT HOLD A PARTITION SALE OF PROPERTY AND WHO MAY NOT PURCHASE PROPERTY IN A PARTITION SALE, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-7 reads as rewritten:

"**§ 46-7. Commissioners appointed.**

The superior court shall appoint three disinterested commissioners to divide and apportion such real estate, or so much thereof as the court may deem best, among the several tenants in common, or joint tenants. Provided, in cases where the land to be partitioned lies in more than one county, then the court may appoint such additional commissioners as it may deem necessary from counties where the land lies other than the county where the proceedings are instituted. For purposes of this section, attorneys who currently represent the parties in the pending partition proceeding and attorneys who have previously represented the parties in a related partition proceeding are not "disinterested" and cannot serve as commissioners, except by consent of the parties."

SECTION 2.(a) G.S. 46-31 reads as rewritten:

"**§ 46-31. ~~Clerk not to appoint self, assistant or deputy to sell real property.~~Who may not hold sale.**

~~No clerk of the superior court shall appoint himself or his assistant or deputy to make sale of any property in any proceeding before him.~~ The following persons shall not sell or be appointed to sell the property in a partition sale under Article 2 of Chapter 46 of the General Statutes:

(1) The clerk of superior court, the clerk's assistant clerk, or the clerk's deputy clerk if there has been a proceeding before that clerk of court.

(2) Attorneys who currently represent the parties in the pending partition proceeding.

(3) Attorneys who have previously represented the parties in a related partition proceeding."

SECTION 2.(b) Article 4 of Chapter 46 is amended by adding a new section to read:

"**§ 46-31.1. Ineligible purchasers.**

The following persons are not eligible to purchase land in a partition sale under Article 2 of Chapter 46 of the General Statutes:

(1) Attorneys who currently represent the parties in the pending partition proceeding or the attorneys' agents.

(2) Attorneys who have previously represented the parties in a related partition proceeding or the attorneys' agents.

(3) Commissioners who have been involved in the partition proceedings at any time or the commissioners' agents.

(4) Appraisers who have been involved in the partition proceedings at any time or the appraisers' agents."

SECTION 3. This act becomes effective October 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 580

Short Title:	Partition Sales/Notice, Credit, Appraisal.	(Public)
Sponsors:	Representatives Bryant, Michaux, Allen, Blue (Primary Sponsors); Hall, Harrison, Jones, Lucas, Parmon, Pierce, Wainwright, and Womble.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary I.	

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE GREATER NOTICE TO PARTIES WHO MAY BE UNKNOWN IN A PARTITION PROCEEDING, TO CODIFY THE CURRENT PRACTICE OF GRANTING OWNERS CREDIT FOR THEIR EXISTING INTEREST IN LAND WHEN BIDDING ON A PARTITION SALE, AND TO REQUIRE A COURT TO ORDER AN INDEPENDENT APPRAISAL IF A PARTY TO THE PARTITION CHALLENGES THE AMOUNT BID IN A PARTITION SALE, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-6 reads as rewritten:

"**§ 46-6. Unknown parties; ~~summons and~~ summons, notice, and representation.**

(a) If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices as provided in this section. The petitioner must specifically allege in an affidavit or otherwise the facts showing what due diligence the petitioner exercised. The petitioner shall set forth facts based upon the personal knowledge of the petitioner concerning the methods, means, and attempts to locate and to effect personal service on the unknown or unlocatable persons, including efforts to utilize, review, or otherwise draw upon sources of information readily available to the petitioner, including Internet sources. Before ordering notice by publication, the clerk must determine that the petitioner did exercise due diligence in attempting to find unknown or unlocatable persons who may have an interest in the property.

(b) The court shall order notices to be given to all such persons by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. The notice by publication shall include a description of the property which includes the street address or other common designation for the property, the legal description, and the acreage of the property.

(c) ~~If~~ Before or after such general notice by publication if any person interested in the premises and entitled to notice fails to appear, the court shall ~~in its discretion~~ appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown and unrepresented. For purposes of this section, attorneys who currently represent the parties in the pending partition proceeding and attorneys who have previously represented the parties in a related partition proceeding cannot represent unknown or unlocatable persons who may have an interest in the property."

SECTION 2. G.S. 46-28 reads as rewritten:

"**§ 46-28. Sale procedure.**

(a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General ~~Statutes.~~ Statutes, except as provided herein.

(b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b.

(c) Any cotenant making an offer in a sale of an entire parcel shall receive credit for the interest the cotenant already owns and shall receive a corresponding reduction in the amount of money owed after deducting the costs and fees associated with the sale. When making a joint offer, cotenants may aggregate the credit for the cotenants' interests."

SECTION 3. G.S. 46-28.1 reads as rewritten:

"**§ 46-28.1. Petition for revocation of confirmation order.**

(a) Notwithstanding G.S. 46-28 or any other provision of law, an order confirming the partition sale of real property shall not become final and effective until 15 days after entered. At any time before the confirmation order becomes final and effective, any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

(1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.

(2) In the case of any party to the partition proceeding:

a. Notice of the partition was not served on the petitioner for revocation as required by Rule 4 of the Rules of Civil Procedure; or

b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46-28(b); or

c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the hearing to be served on the petitioner, the officer or person designated to make such a sale and all parties required to be served under Rule 5 of G.S. 1A-1.

(c) In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence that:

(1) A lien remains unsatisfied on the property to be conveyed; and

(2) The purchaser has not agreed in writing to assume the lien; and

(3) The lien will not be satisfied out of the proceeds of the sale; and

(4) The existence of the lien was not disclosed in the notice of sale of the property, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

The order of the court in revoking an order of confirmation under this section may not be introduced in any other proceeding to establish or deny the existence of a lien.

(d) In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a case pursuant to a., b., or c. of subsection (a)(2), the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

(d1) In the case of a petition brought pursuant to sub-subdivision c. of subdivision (2) of subsection (a) of this section, the court shall order an independent appraisal. Based on the appraisal, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer. The cost of an independent appraisal shall be apportioned to all parties, pro rata.

(e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes."

SECTION 4. This act becomes effective October 1, 2009.

Karon Hardy (Rep. Bryant)

From: Bill Patterson (Research)
Sent: Monday, April 06, 2009 12:23 PM
To: Rep. Angela Bryant
Cc: Ryan Blackledge (Bill Drafting); Brenda Carter (Research); Susan L. Sitze (Research)
Subject: [RTS-2009-00649] Need info asap before Weds comm meeting- H 578 (Rep. Angela Bryant)

Categories: RTS-2009-00649
rtsDescription: Need info asap before Weds comm meeting- H 578
rtsID: 3422
rtsName: RTS-2009-00649
rtsYear: 2009

Representative Bryant:

On April 1, 2009, you asked us to research the issue of whether, under the Rules of Professional Responsibility, a conflict of interest would arise if an attorney were either to serve as a commissioner to conduct a partition sale of real property, or were to purchase the property himself or herself at the partition sale, under either of the following scenarios:

Scenario 1: The attorney represents one of the owners of the property seeking the partition sale; or

Scenario 2: The attorney does not represent any of the parties to the partition proceeding, but represented one or more of those parties in a separate but related partition proceeding in the past.

Based on our review of the Rules of Professional Conduct and published State Bar ethics opinions, we believe that the State Bar would conclude as follows:

Under Scenario 1, the attorney would have a potential conflict of interest in serving as the commissioner to sell the property, and would have an actual conflict of interest in purchasing the property at the sale.

Under Scenario 2, the attorney would not have a conflict of interest in conducting the sale or in purchasing the property at the sale.

In addition, based on an ethics opinion issued in 2006 (2006 FEO 5) we believe that the State Bar would rule that the Rules of Professional Conduct would not permit an attorney conducting the sale as a commissioner to bid on the property at the sale.

Detailed Discussion

Applicable Rules of Professional Responsibility:

Rule 1.7 precludes representation that involves a concurrent conflict of interest, defined as representation that may be materially limited by the lawyer's responsibilities to another client, a former client, a third person, or by a personal interest of the lawyer, unless: the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; the representation is not prohibited by law; the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and each affected client gives informed consent, confirmed in writing.

Rule 1.8 prohibits an attorney from acquiring a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client (with certain exceptions not applicable to this inquiry).

While no ethics opinions addressing this precise issue have been promulgated by the State Bar, the following opinions on related issues are of interest:

2006 Formal Ethics Opinion 5 ruled that a county tax attorney may not bid at a tax foreclosure sale of real property that he is conducting as the appointed commissioner.

RPC 24, an ethics opinion issued in 1987 under the now-superseded (1985) Rules of Professional Conduct, ruled that a lawyer may not purchase his client's property at an execution sale on his own account because of conflict of

interest, unless the attorney entered his bid with the informed consent of his client having first formed a reasonable belief that his personal interest would not adversely affect the representation and that the transaction would be fair to his client.

Analysis:

Scenario 1 - the attorney concurrently represents one of the owners of the property seeking the partition sale.

Issue 1: Is there a conflict of interest in the attorney serving as a commissioner to conduct the sale?

Answer: Potentially, yes.

Discussion: Any party to a partition sale proceeding has the right to challenge the sale by petitioning the court to revoke the clerk's order confirming the sale based on improper notice or inadequate and inequitable price. G.S. 46-28.1. If the commissioner responsible for conducting the sale is the attorney for one of the parties to the proceeding, then such a challenge would create a conflict of interest under Rule 1.7(a), because the attorney's personal interest (in defending his conduct of the sale) could materially limit his or her ability to advise the client on the issues raised by the challenge. This potential conflict of interest could arise regardless of whether the challenging party was the client or another party to the proceeding. In the event of such a challenge, Rule 1.7(a) would appear to require the attorney to withdraw from the representation of the owner-client, unless the attorney reasonably believed that he or she could provide competent and diligent representation to the client and obtained the client's informed written consent to the continued representation under Rule 1.7(b).

Issue 2: Is there a conflict of interest in the attorney purchasing the property at the sale?

Answer: Yes.

Discussion:

Rule 1.7 analysis: The partition sale bidder's interest in buying at the lowest price conflicts with the owners' interest in receiving selling at the highest price. Under Rule 1.7(a), this conflict of interest would likely preclude a bidding attorney from concurrently representing one of the owners of the property, unless under Rule 1.7(b), the attorney reasonably believed that he or she could provide competent and diligent representation to the client, and obtained the client's informed written consent to such concurrent representation.

Rule 1.8 analysis: Even if the purchasing attorney could justify concurrent representation of an owner under Rule 1.7(b), such concurrent representation would appear to be prohibited under Rule 1.8(i). The partition proceeding is not terminated upon the clerk's order authorizing the sale. Because the owners have the right to challenge the adequacy of the sale price, the attorney's representation continues until the sale is finalized. For this reason, the attorney who purchased the property would be acquiring an interest in the subject matter of the litigation (the partition action) being conducted for the client, which is prohibited under Rule 1.8(i). Thus, an attorney likely could not ethically bid on the property while simultaneously representing one of the owners of the property.

Scenario 2 - the attorney formerly represented one or more of the parties in a separate but related partition proceeding, but does not represent any of the parties to the current proceeding.

Issue 1: Is there a conflict of interest in the attorney serving as commissioner to conduct the sale?

Answer: No.

Discussion:

Rule 1.7 analysis: If the attorney does not currently represent any of the parties to the current proceeding, then the attorney is not exposed to the potential conflict of interest involved in advising a party to the proceeding on an issue raised by any party's challenge to the sale being conducted by the attorney.

Rule 1.8 analysis: under this scenario the attorney does not acquire a proprietary interest in the subject matter of the proceeding by acting as the commissioner in conducting the sale, and thus Rule 1.8(i) is not triggered.

Issue 2: Is there a conflict of interest in the attorney purchasing the property at the sale?

Answer: No.

Discussion:

Rule 1.7 analysis: Because the attorney does not represent any parties to the partition proceeding, his or her interest in bidding on the property does not conflict with the interest of his or her client, and thus does not trigger the prohibition under Rule 1.7.

Rule 1.8 analysis: Because the attorney does not represent any parties to the partition proceeding, he or she is not acquiring a proprietary interest in the subject matter of any cause of action in which he or she is representing a client, and thus would not trigger the prohibition under Rule 1.8(i).

The foregoing represents our opinion as to what the State Bar would conclude if faced with this inquiry. A more authoritative opinion would require seeking a ruling from the State Bar itself. However, it appears that the next meeting of the State Bar at which any such proposed opinion could be reviewed and approved would be the July 2009 quarterly meeting.

Bill Patterson
Staff Attorney
Research Division
32578

**********Original Request**********
From: Rep. Angela Bryant
ate: 04/01/2009 06:32:43 PM
ıbject: Need info asap before Weds comm meeting- H 578
****

Re; H 578-- partition sales/commissioners, sellers and buyers;
Walker -- Is it a conflict of interest under the Code of professional responsibility for an attorney who represented parties seeking a sale of property opposed by other joint owners in a partition proceeding to then hold the sale after the clerk orders the partitionsale in favor of the attorney and petitioning party.
Is it a conflict of interest for the attorney to purchase the property at the partition sale?
Same question regarding attorneys who have previously represented any of the parties in a related partition proceeding?
THanks for your help in this matter.
Rep. Angela R. Bryant
District 7- Halifax and Nash Counties
300 N. Salisbury Street, Room 542
Raleigh, NC 27603-5925
919-733-5878
Angelab@ncleg.net
www.ncleg.net
919-733-3113- fax
Karon Hardy - Leg. Asst.
bryantla@ncleg.net

Part 2. Procedure for Public Sales of Real and Personal Property.

§ 1-339.13. Public sale; order of sale.

(a) Whenever a public sale is ordered, the order of sale shall

(1) Designate the person authorized to hold the sale;

(2) Direct that the property be sold at public auction to the highest bidder or, in the case of a sale of timber, direct that the timber be sold to the highest bidder and specify whether the sale is to be by public auction or by sealed bid;

(3) Describe real property to be sold, by reference or otherwise, sufficiently to identify it;

(4) Describe personal property to be sold, by reference or otherwise, sufficiently to indicate its nature and quantity;

(5) Designate, consistently with G.S. 1-339.6, the county and the place therein at which the sale is to be held;

(6) Prescribe the terms of sale, specifying the amount of the cash deposit, if any, to be made by the highest bidder at the sale; and

(7) If the sale is to be a sale of timber by sealed bid, specify:

a. The minimum number of bids that must be submitted, which shall not be less than three, and

b. The time at which any cash deposit required of the highest bidder must be made, which shall not be more than three business days after the date on which the sealed bids are opened.

(b) The order of public sale may also, but is not required to

(1) State the method by which the property shall be sold, pursuant to G.S. 1-339.9;

(2) Direct any posting of the notice of sale or any advertisement of the sale, in addition to that required by G.S. 1-339.17 in the case of real property or G.S. 1-339.18 in the case of personal property, which the judge or clerk of the superior court deems advantageous; and

(3) Specify the number of appraisals to be obtained pursuant to G.S. 1-339.13A.

(c) The order of public sale may provide that personal property need not be present at the place of sale when the nature, condition or use of the property is such that the judge or clerk ordering the sale deems it impractical or inadvisable to require the presence of the property at the sale. In such event, the order shall provide that reasonable opportunity be afforded prospective bidders to inspect the property prior to the sale, and that notice as to the time and place for inspection shall be set out in the notice of sale. (1949, c. 719, s. 1; 1997-83, ss. 4, 5.)

REPRESENTATIVE ANGELA R. BRYANT
NORTH CAROLINA HOUSE OF REPRESENTATIVES
7TH DISTRICT - HALIFAX AND NASH COUNTIES

STATE LEGISLATIVE OFFICE BUILDING
300 N. SALISBURY STREET, ROOM 542
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717 WEST END STREET
ROCKY MOUNT, NC 27803
(252) 442-4022
(703) 783-8553 FAX

§ 1-339.28. Public sale; confirmation of sale.

(a) No public sale of real property may be consummated until confirmed as follows:

(1) If a public sale is ordered by a judge of the Superior Court Division, it may thereafter be confirmed by a resident superior court judge of the district or a superior court judge regularly holding the courts of the district.

(2) If a public sale is ordered by a judge of the District Court Division, it may thereafter be confirmed by the judge so ordering, the chief district judge, or any district judge authorized by the chief judge to hear motions and enter interlocutory orders.

(3) If a public sale is ordered by a clerk of court, it may thereafter be confirmed by the clerk of court so ordering.

(b) No public sale of real property of a minor or incompetent originally ordered by a clerk may be consummated until confirmed both by the clerk and by a resident superior court judge of, or a judge regularly holding the courts of, the district or set of districts as defined in G.S. 7A-41.1(a).

(c) No public sale of real property sold at public auction may be confirmed until the time for submitting an upset bid, pursuant to G.S. 1-339.25, has expired.

(d) Confirmation of the public sale of personal property is necessary only in the case set out in G.S. 1-339.23(a), or when the order of sale provides for such confirmation.

(e) No public sale of timber sold by sealed bid shall be confirmed until the court determines that the highest bid is an adequate price for the timber sold and that sale to the highest bidder is in the best interest of the person or estate for whom the timber is being sold. In so doing, the court may consider any of the following factors:

(1) The appraisals obtained by the person who conducted the sale;

(2) The number and amounts of the other bids received;

(3) Comparable sales of similar timber within the relevant time period;

(4) Short-term market factors that depressed the price at the time of the sale;

(5) The likelihood of significantly increasing the price through another sale;

(6) The additional cost of conducting another sale;

(7) The effect on the person or estate for whom the timber is being sold of the delay that would result from conducting another sale; and

(8) Any other factors in evidence that the court considers relevant. (1949, c. 719, s. 1; 1971, c. 268, s. 20; 1997-83, ss. 26-28.)

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, April 15, 2009

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, April 15, 2009, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Mitch Gillespie, Jim Gulley, Phil Haire, Dewey Hill, Mark Hilton, Sarah Stevens, Joe Tolson, and Winkie Wilkins. Staff in attendance: Brenda Carter, Peter Capriglione and Susan Seitz. House Sergeant-at-Arms assisting: John Brandon and Bob Rossi. House Pages: John Privott from Lee County sponsored by Representative Love and Isaac Church from Caldwell County sponsored by Representative Starnes. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

With the Chairman Faison being in another committee to present a bill he requested that Rep. Kelly Alexander called the meeting to order. Chairman Alexander welcomed staff, pages, members and visitors. The Calendar was rearranged to meet the needs of the Chairman an sponsors present or not present. The following bill was placed before the Committee:

House Bill 1107–A BILL TO BE ENTITLED: an act amending the laws pertaining to contracts between a husband and wife to allow a spouse to waive alimony and post separation support during the marriage. The Chair called upon the bill sponsor Rep. Rhyne to explain the bill. After the explanation of the bill Chairman Alexander opened the floor for questions and comments. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 3*)

House Bill 629–A BILL TO BE ENTITLED: an act providing that the trial of a small claims action may commence not sooner than five days after service of the magistrate summons on the defendant. The Chair called upon the bill sponsor Rep. Sutton to explain the bill. After the explanation of the bill Chairman Alexander opened the floor for questions and comments. Rep. Stevens was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 4*)

House Bill 630–A BILL TO BE ENTITLED: an act providing that the trial in a summary ejectment proceeding may commence not sooner than two days after service of the complaint and summons on the defendant. Rep. Haire moved that the

proposed committee substitute be before the committee. The Chair called upon the bill sponsor Rep. Sutton to explain the bill. After the explanation of the bill Chairman Alexander opened the floor for questions and comments. Rep. Stevens was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 5*)

House Bill 885–A BILL TO BE ENTITLED: an act to prohibit persons assembling for the purpose of picketing directed at a single residence in a manner that disrupts the tranquility of that residence. Rep. Tolson moved that the proposed committee substitute be before the committee. The Chair called upon the bill sponsor Rep. Ross to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tillis was recognized for a motion to report the bill without prejudice. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 6*)

House Bill 1077–A BILL TO BE ENTITLED: an act to amend the venue rules and the authority of magistrates for municipalities lying in four or more counties, each of which is in a different judicial district. The Chair called upon the bill sponsor Rep. Wiley to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Haire was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, Sponsors Handout and Committee Report are attached. (*Attachment 7*)

House Bill 1463–A BILL TO BE ENTITLED: an act allowing adult biological siblings of adult adoptees, adult biological half siblings of adult adoptees, adult family members of deceased adoptees, and adult family members of deceased biological parents to have access to confidential intermediary services upon the consent of the parties and to allow an agency acting as a confidential intermediary to obtain a copy of a death certificate of the person who is the subject of the search and deliver in to the person requesting services. The Chair called upon the bill sponsor Rep. Dickson to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tolson was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 8*)

House Bills 283 and 490 were taken off the calendar per the bill sponsors requests.

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:51 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, April 15, 2009
1:00PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	HB 283	Clarify Broadband Internet Access Definition.	Representative Alexander
2.	HB 490	Purchasing Process for Community Colleges.	Representative Tolson
3.	HB 629	Small Claims Court/Trials.	Representative Sutton
4.	HB 630	Summary Ejectment/Trials.	Representative Sutton
5.	HB 885	No Picketing/Disrupt Residential Tranquility.	Representative Ross
6.	HB 1077	Venue/Municipalities in Multiple Districts.	Representative Wiley
7.	HB 1107	Alimony and Post Separation Support Waiver.	Representative Rhyne, Jr.
8.	HB 1463	Expand Access/Confidential Intermediaries.	Representative Dickson

4. **Adjourn**

VISITOR REGISTRATION SHEET

~~22~~ 15 April 09

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Angie Bailey	The e-NC Authority
Charles Pittman	e-NC Authority
Stan Pace	Verizon
Dwight Allen	Allen Law Offices, PLLC
[illegible]	~~NCDOT~~
Lemuel W. Hinton	NCUC
Daniel Long	"
Tom Coley	NC CWA
Herb Crenshaw	AT&T
Brian Beasley	High Point Police Attorney
Bruce Wiley	4018 Rumbleacres High Point

VISITOR REGISTRATION SHEET

15 April 09

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Thomas Moore	Edwards & Hold
Wendy Kelly	SZD Wicker
Lynn Holmes	RHG/NCCTA
Penny Griffin	School of Gov.
Jane Smith Patterson	The e-NC Authority
Tammy Johnson	NC DSS
Charisse S. Johnson	NC DSS

VISITOR REGISTRATION SHEET

15 April 09

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sammy Robertson	TWC
Brad Phillips	TWC
Mary Tate	Bode's Pierce
Melissa Reed	PP
Sean Kosofsky	NARAL
Catherine Rice	Action Audits
David McDowan	NC Realtors
Dana Simpson	SA
Fiona Morgan	reporter, Independent Weekly
Alicia Dow	MWC
Bob Wells	N.C. Indep. Telco Alliance
Bill Sloggin	KCB

VISITOR REGISTRATION SHEET

15 April 09

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Craig	Verizon
Steve Brewer	EmBARQ
Marty Bocock	" "
Paula A. Wolf	NC NOW
BRIAN LEWIS	NCAE
Allison Cooper	PRW Attorneys. P.A.

HOUSE BILL 1107

Short Title:	Alimony and Post Separation Support Waiver.	(Public)
Sponsors:	Representatives Rhyne, Goodwin (Primary Sponsors); and K. Alexander.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary II.	

April 7, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS PERTAINING TO CONTRACTS BETWEEN A HUSBAND AND WIFE TO ALLOW A SPOUSE TO WAIVE ALIMONY AND POST SEPARATION SUPPORT DURING THE MARRIAGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 52-10 is amended by adding the following new subsection to read:

"(a1) A contract between a husband and wife to waive and release all rights and obligations to post separation support, alimony, or spousal support is valid and not inconsistent with public policy, with or without valuable consideration, if the contract is in writing and is acknowledged by both parties before a certifying officer. A release made pursuant to this subsection may be pleaded in bar of any action or proceeding for the recovery of the rights released."

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

HOUSE BILL 1107:
Alimony and Post Separation Support Waiver

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary II	**Date:**	April 14, 2009
Introduced by:	Reps. Rhyne, Goodwin	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1107 amends the laws pertaining to contracts between a husband and wife to allow a spouse to waive alimony and post separation support during the marriage.***

BILL ANALYSIS: House Bill 1107 provides that a contract between a husband and wife to waive and release all rights & obligations related to post separation support, alimony, or spousal support is valid and not against public policy. The contract must be in writing and acknowledged by both parties before a certifying officer.

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1107 A BILL TO BE ENTITLED AN ACT AMENDING THE LAWS PERTAINING TO CONTRACTS BETWEEN A HUSBAND AND WIFE TO ALLOW A SPOUSE TO WAIVE ALIMONY AND POST SEPARATION SUPPORT DURING THE MARRIAGE.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 629
Committee Substitute Favorable 3/30/09

Short Title: Small Claims Court/Trials. (Public)

Sponsors:

Referred to:

March 18, 2009

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE TRIAL OF A SMALL CLAIMS ACTION MAY COMMENCE NOT SOONER THAN FIVE DAYS AFTER SERVICE OF THE MAGISTRATE SUMMONS ON THE DEFENDANT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-214 reads as rewritten:

"**§ 7A-214. Time within which trial is set.**

The time for trial of a small claim action is set not later than 30 days after the action is commenced. If the time set for trial is earlier than five days after service of the magistrate summons, the magistrate shall order a continuance. By consent of all parties the time for trial may be changed from the time set. For good cause shown, the magistrate to whom the action is assigned may grant continuances from time to time."

SECTION 2. This act becomes effective October 1, 2009, and applies to actions filed on or after that date.

HOUSE BILL 629:
Small Claims Court/Trials

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	April 15, 2009
Introduced by:	Rep. Sutton	**Prepared by:**	Brenda J. Carter
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 629 would provide that a trial for a small claims action be held no sooner than five days after the defendant has been served with the magistrate summons.

CURRENT LAW: A small claims action is one where a plaintiff requests assignment to a magistrate and the amount in controversy is $5,000 or less. The principal relief sought in small claims court is monetary, the recovery of specific personal property, or summary ejectment (eviction). The plaintiff in a small claims action files a complaint in the office of the clerk of superior court in the county in which the defendant resides. The clerk then issues a magistrate summons to be served on the defendant. The issuance of a magistrate summons commences the action. Under G.S. 7A-214, the time for trial of the small claims action is to be set no later than 30 days after the action is commenced.

BILL ANALYSIS: House Bill 629 would amend G.S. 7A-214 to require that a trial for a small claims action be held no sooner than five days after the service of the magistrate summons on the defendant.

EFFECTIVE DATE: The act would become effective October 1, 2009, and would apply to actions filed on or after that date.

Wendy Graf Ray, counsel to House Judiciary III, substantially contributed to this summary.

H629-SMRV-38(e2) v2

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

HB 629 A BILL TO BE ENTITLED AN ACT PROVIDING THAT THE TRIAL OF A SMALL CLAIMS ACTION MAY COMMENCE NOT SOONER THAN FIVE DAYS AFTER SERVICE OF THE MAGISTRATE SUMMONS ON THE DEFENDANT.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 630
Committee Substitute Favorable 3/30/09

Short Title: Summary Ejectment/Trials. (Public)

Sponsors:

Referred to:

March 18, 2009

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE TRIAL IN A SUMMARY EJECTMENT PROCEEDING MAY COMMENCE NOT SOONER THAN TWO DAYS AFTER SERVICE OF THE COMPLAINT AND SUMMONS ON THE DEFENDANT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 42 of the General Statutes is amended by adding a new section to read as follows:

"**§ 42-30.1. Time within which trial is set.**

If the time set for trial in the summons is less than two days after service has been made on the defendant as provided in G.S. 42-29, excluding weekends and legal holidays, the magistrate shall order the trial to be continued to provide at least two days, excluding weekends and legal holidays, from the date of service to the date of trial."

SECTION 2. This act becomes effective October 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 630
PROPOSED COMMITTEE SUBSTITUTE H630-CSRL-10 [v.2]

4/15/2009 9:40:36 AM

Short Title: Summary Ejectment/Trials. (Public)

Sponsors:

Referred to:

March 18, 2009

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE TRIAL IN A SUMMARY EJECTMENT PROCEEDING MAY COMMENCE NOT SOONER THAN TWO BUSINESS DAYS AFTER SERVICE OF THE COMPLAINT AND SUMMONS ON THE DEFENDANT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-29 reads as rewritten:

"**§ 42-29. Service of summons.**

The officer receiving the summons shall mail a copy of the summons and complaint to the defendant no later than the end of the next business day or as soon as practicable at the defendant's last known address in a stamped addressed envelope provided by the plaintiff to the action. The officer may, within five days of the issuance of the summons, attempt to telephone the defendant requesting that the defendant either personally visit the officer to accept service, or schedule an appointment for the defendant to receive delivery of service from the officer. If the officer does not attempt to telephone the defendant or the attempt is unsuccessful or does not result in service to the defendant, the officer shall make at least one visit to the place of abode of the defendant within five days of the issuance of the ~~summons~~summons, but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding weekends and legal holidays, at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service. He then shall deliver a copy of the summons together with a copy of the complaint to the defendant, or leave copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. If such service cannot be made the officer shall affix copies to some conspicuous part of the premises claimed and make due return showing compliance with this section."

SECTION 2. This act becomes effective October 1, 2009 and applies to actions filed on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

HB 630 A BILL TO BE ENTITLED AN ACT PROVIDING THAT THE TRIAL IN A SUMMARY EJECTMENT PROCEEDING MAY COMMENCE NOT SOONER THAN TWO DAYS AFTER SERVICE OF THE COMPLAINT AND SUMMONS ON THE DEFENDANT.

☒ With a favorable report as to Committee Substitute Bill -2, unfavorable as to Committee Substitute Bill -1.

(FOR JOURNAL USE ONLY)

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

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

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

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 885

Short Title:	No Picketing/Disrupt Residential Tranquility.	(Public)
Sponsors:	Representatives Ross; Glazier and Lucas.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary I.	

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT PERSONS ASSEMBLING FOR THE PURPOSE OF PICKETING DIRECTED AT A SINGLE RESIDENCE IN A MANNER THAT DISRUPTS THE TRANQUILITY OF THAT RESIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-277.4 reads as rewritten:

"**§ 14-277.4. Obstruction of health care facilities.**

(a) No person shall obstruct or block another person's access to or egress from a health care facility or from the common areas of the real property upon which the facility is located in a manner that deprives or delays the person from obtaining or providing health care services in the facility.

(b) No person shall injure or threaten to injure a person who is or has been:

(1) Obtaining health care services;

(2) Lawfully aiding another to obtain health care services; or

(3) Providing health care services.

(b1) No person shall assemble with another person for the purpose of engaging in picketing directed at or focused on a single residence in a manner that disrupts the tranquility of that residence.

(c) A violation of subsection ~~(a) or (b)~~ (a), (b), or (b1) of this section is a Class 2 misdemeanor. A second conviction for a violation of ~~either~~ subsection ~~(a) or (b)~~(a), (b), or (b1) of this section within three years of the first shall be punishable as a Class 1 misdemeanor. A third or subsequent conviction for a violation of ~~either~~ subsection ~~(a) or (b)~~(a), (b), or (b1) of this section within three years of the second or most recent conviction shall be punishable as a Class I felony.

(d) Any person aggrieved under this section may seek injunctive relief in a court of competent jurisdiction to prevent threatened or further violations of this section. Any violation of an injunction obtained pursuant to this section constitutes criminal contempt and shall be punishable by a term of imprisonment of not less than 30 days and no more than 12 months.

(e) This section shall not prohibit any person from engaging in lawful speech or picketing which does not impede or deny another person's access to health care services or to a health care facility or interfere with the delivery of health care services within a health care facility.

(f) "Health care facility" as used in this section 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.

(g) "Health care services" as used in this section means services provided in a health care facility.

(h) Persons subject to the prohibitions in subsection (a) of this section do not include owners, officers, agents, or employees of the health care facility or law enforcement officers acting to protect real or personal property.

(i) Nothing in this section shall be construed to prohibit general picketing that proceeds through residential neighborhoods or that proceeds past residences."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

HOUSE BILL 885:
No Picketing/Disrupt Residential Tranquility

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	April 14, 2009
Introduced by:	Rep. Ross	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H885-CSSA-12		

SUMMARY: The Proposed Committee Substitute for House Bill 885 would prohibit persons from assembling for the purpose of picketing directed at a single residence in a manner that disrupts the tranquility of that residence.

BILL ANALYSIS: The PCS for House Bill 885 creates a new statute, G.S. 14-277.6, which would prohibit a person from assembling with another person for the purpose of engaging in picketing directed at or focused on a single residence in a manner that disrupts the tranquility of that residence.

The PCS creates a Class 2 misdemeanor for a 1st offense, a Class 1 misdemeanor for a 2nd offense within 3 years, and a Class I felony for a 3rd or subsequent offense within 3 years of the last offense.

The PCS provides for injunctive relief to prevent further violations and criminal contempt for violation of an injunction.

The PCS specifically states that nothing shall be construed to prohibit general picketing that proceeds through residential neighborhoods or that proceeds past residences.

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 885
PROPOSED COMMITTEE SUBSTITUTE H885-CSSA-12 [v.2]

4/14/2009 6:19:48 PM

Short Title: No Picketing/Disrupt Residential Tranquility. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT PERSONS ASSEMBLING FOR THE PURPOSE OF PICKETING DIRECTED AT A SINGLE RESIDENCE IN A MANNER THAT DISRUPTS THE TRANQUILITY OF THAT RESIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 35 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-277.6. Picketing a residence.**

(a) No person shall assemble with another person for the purpose of engaging in picketing directed at or focused on a single residence in a manner that disrupts the tranquility of that residence.

(b) A violation of this section is a Class 2 misdemeanor. A second conviction for a violation of this section within three years of the first shall be punishable as a Class 1 misdemeanor. A third or subsequent conviction for a violation of this section within three years of the second or most recent conviction shall be punishable as a Class I felony.

(c) Any person aggrieved under this section may seek injunctive relief in a court of competent jurisdiction to prevent threatened or further violations of this section. Any violation of an injunction obtained pursuant to this section constitutes criminal contempt and shall be punishable by a term of imprisonment of not less than 30 days and no more than 12 months.

(d) This section shall not prohibit any person from engaging in lawful speech or picketing which does not disrupt the tranquility of a residence.

(e) Nothing in this section shall be construed to prohibit general picketing that proceeds through residential neighborhoods or that proceeds past residences."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 885 A BILL TO BE ENTITLED AN ACT TO PROHIBIT PERSONS ASSEMBLING FOR THE PURPOSE OF PICKETING DIRECTED AT A SINGLE RESIDENCE IN A MANNER THAT DISRUPTS THE TRANQUILITY OF THAT RESIDENCE.

☒ Without prejudice as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

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

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

HOUSE BILL 1077*

Short Title:	Venue/Municipalities in Multiple Districts.	(Public)
Sponsors:	Representatives Wiley, Jones (Primary Sponsors); Adams, Harrison, and Jeffus.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary III.	

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE VENUE RULES AND THE AUTHORITY OF MAGISTRATES FOR MUNICIPALITIES LYING IN FOUR OR MORE COUNTIES, EACH OF WHICH IS IN A DIFFERENT JUDICIAL DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-199(c) reads as rewritten:

"(c) A district court judge sitting at a seat of court described in this section may, in criminal cases, conduct preliminary hearings and try misdemeanors arising within the corporate limits of the municipality plus the territory embraced within a distance of one mile in all directions therefrom.

If the corporate limits of the municipality extend into two or more counties, each of which is in a separate district court district, a district court judge assigned to sit at the seat of court has the same authority over criminal cases arising in the municipality and the territory embraced within a distance of one mile in all directions that he would have if the corporate limits of the municipality were solely located in a single district court district. Judges assigned to sit in such a municipality shall be assigned by the chief district court judge serving the district in which a majority of the voters of the municipality reside, but offenses arising in ~~the~~ a portion of the municipality in which ~~the~~ a minority of the voters reside shall not be disposed of in the municipality unless the chief district court judge for that district consents in writing to the disposition of criminal cases in the municipality. However, if the corporate limits of the municipality extend into four or more counties, each of which is in a separate district court district, offenses arising in a portion of the municipality in which a minority of the voters resides shall be disposed of in the municipality without obtaining the consent of the chief district court judge for the district in which the offense occurred."

SECTION 2. G.S. 7A-293 reads as rewritten:

"**§ 7A-293. Special authority of a magistrate assigned to a municipality located in more than one county of a district court district.**

A magistrate assigned to an incorporated municipality, the boundaries of which lie in more than one county of a district court district, may, in criminal matters, exercise the powers granted by G.S. 7A-273 as if the corporate limits plus the territory embraced within a distance of one mile in all directions therefrom were located wholly within the magistrate's county of residence. Appeals from a magistrate exercising the authority granted by this section shall be taken in the district court in the county in which the offense was committed. A magistrate exercising the special authority granted by this section shall transmit all records, reports, and monies collected to the clerk of the superior court of the county in which the offense was committed. In addition, if a magistrate is assigned to an incorporated municipality, the boundaries of which lie in two or more district court districts, the magistrate may exercise the

powers described in this section as if both counties were in the same district court district, if the clerks of superior court and the chief district court judges serving both districts in which the municipality is located agree in writing that the exercise of this special authority would promote the administration of justice in the municipality and in both districts. However, if a magistrate is assigned to an incorporated municipality, the boundaries of which lie in four or more counties, each of which is in a separate district court district, the magistrate may exercise the powers described in this section as if all the counties were in the same district court district, without the necessity of such an agreement between the clerks and judges of the affected counties, and the records, reports, and monies collected in connection with the exercise of that authority shall be transmitted to the clerk of the superior court district for which the municipality is a seat of court."

SECTION 3. G.S. 15A-131(c) reads as rewritten:

"(c) Except as otherwise provided in this subsection, venue for probable cause hearings and trial proceedings in cases within the original jurisdiction of the superior court lies in the county where the charged offense occurred. ~~If~~ Except as otherwise provided in this subsection, if the alleged offense is committed within the corporate limits of a municipality which is the seat of superior court and is located in more than one county, venue lies in the superior court which sits within that municipality, but upon timely objection of the defendant or the district attorney in the county in which the alleged offense occurred the case must be transferred to the county in which the alleged offense occurred. However, if the alleged offense is committed within the corporate limits of a municipality that extends into four or more counties, each of which is in a separate superior court district, offenses committed within the corporate limits of the municipality but in a superior court district other than the one for which the municipality is the seat of superior court shall be disposed of in the municipality with no allowance for objections by the defendant or the district attorney."

SECTION 4. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

HOUSE BILL 1077:
Venue/Municipalities in Multiple Districts

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	April 15, 2009
Introduced by:	Reps. Wiley, Jones	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1077 amends the venue rules and the authority of magistrates for municipalities lying in four or more counties, each of which is in a different judicial district.***

[As introduced, this bill was identical to S854, as introduced by Sen. Vaughan, which is currently in Senate Judiciary II.]

CURRENT LAW: North Carolina law currently makes provisions for the handling of criminal cases that occur in a municipality that is located in two counties which are in two different judicial districts by allowing the cases to be handled in the judicial district that has the majority of the voters in the municipality, with the written consent of the appropriate counterpart in the other judicial district. This is generally handled by standing agreements between the two judicial districts.

BILL ANALYSIS: House Bill 1077 amends the statutes relating to venue and the authorities of magistrates that currently apply to criminal cases within municipalities located in two counties and two judicial districts. The current law remains the same in its application to those municipalities located in two counties and two judicial districts.

House Bill 1077 adds language to the current law to make provisions for the handling of criminal cases in a municipality that is located in four or more counties, all of which are in different judicial districts.

Section 1 provides that if a municipality is located in four or more counties, all of which are in different district court districts, criminal cases arising in the portions of the municipality where a minority of the voters reside may be handled in the district court district where the majority of the voters in the municipality reside without obtaining the consent of the chief district court judge for the district in which the offense occurred.

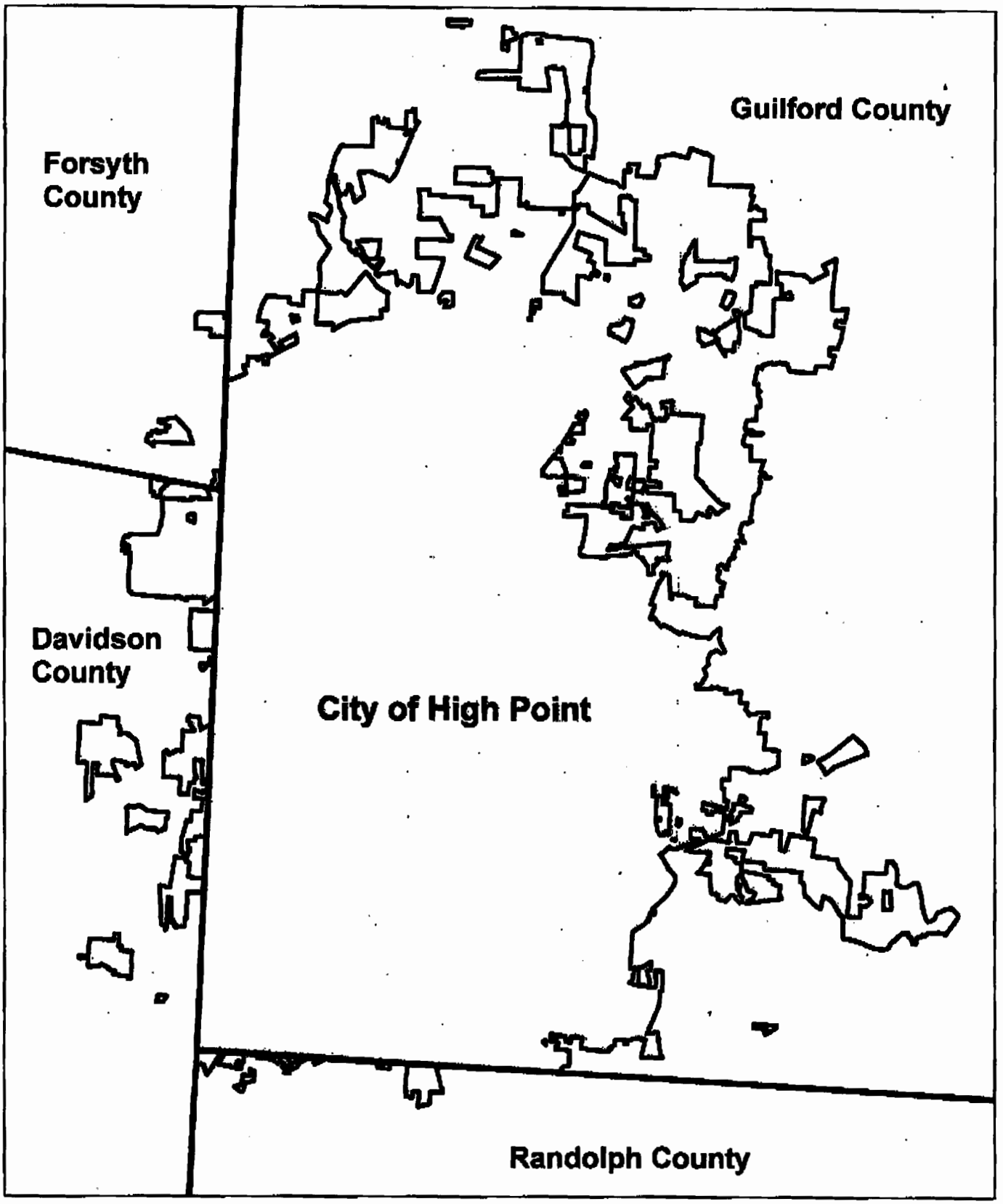
Section 2 provides that if a municipality is located in four or more counties, all of which are in different district court districts, magistrates may exercise authority over criminal cases arising in the portions of the municipality where a minority of the voters reside without obtaining the consent of the chief district court judge or the clerk of superior court for the district in which the offense occurred. The records, reports, and monies collected in connection with the magistrate's exercise of authority shall be transmitted to the clerk of the superior court district for which the municipality is a seat of court.

Section 3 provides that if a municipality is located in four or more counties, all of which are in different superior court districts, criminal cases arising in the portions of the municipality where a minority of the voters reside may be handled in the superior court district where the majority of the voters in the municipality reside with no allowance for objections by the defendant or the district attorney.

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

BACKGROUND: Currently, the only municipality this Act would apply to is High Point.

The Four Counties and the High Point, NC City Limits



Prepared by the High Point Police Department
April 15 2009

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2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1077 A BILL TO BE ENTITLED AN ACT TO AMEND THE VENUE RULES AND THE AUTHORITY OF MAGISTRATES FOR MUNICIPALITIES LYING IN FOUR OR MORE COUNTIES, EACH OF WHICH IS IN A DIFFERENT JUDICIAL DISTRICT.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1463

Short Title:	Expand Access/Confidential Intermediaries.	(Public)
Sponsors:	Representatives Dickson, Wilkins, Harrell, Farmer-Butterfield (Primary Sponsors); Harrison, Jackson, and Lucas.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary I.	

April 13, 2009

A BILL TO BE ENTITLED

AN ACT ALLOWING ADULT BIOLOGICAL SIBLINGS OF ADULT ADOPTEES, ADULT BIOLOGICAL HALF SIBLINGS OF ADULT ADOPTEES, ADULT FAMILY MEMBERS OF DECEASED ADOPTEES, AND ADULT FAMILY MEMBERS OF DECEASED BIOLOGICAL PARENTS TO HAVE ACCESS TO CONFIDENTIAL INTERMEDIARY SERVICES UPON THE CONSENT OF THE PARTIES AND TO ALLOW AN AGENCY ACTING AS A CONFIDENTIAL INTERMEDIARY TO OBTAIN A COPY OF A DEATH CERTIFICATE OF THE PERSON WHO IS THE SUBJECT OF THE SEARCH AND DELIVER IT TO THE PERSON REQUESTING SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-101 reads as rewritten:

"**§ 48-1-101. Definitions.**

...

(5a) "Confidential intermediary" means a licensed adoption agency staff person who may act as a third party to facilitate ~~contact between an adult adoptee or the adult lineal descendant of a deceased adoptee and the biological parent.~~ the sharing of information authorized by G.S. 48-9-104.

...

~~(9a) "Lineal descendant of a deceased adoptee" means any person who descends from the direct line of the adoptee.~~

...."

SECTION 2. G.S. 48-9-101 reads as rewritten:

"**§ 48-9-101. ~~Certain terms~~ Records defined.**

~~(a)~~ For purposes of this Article, "records" means any petition, affidavit, consent or relinquishment, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, invoice, receipt, certificate, or other printed, written, microfilmed or microfiched, video-taped or tape-recorded material or electronic data processing records regardless of physical form or characteristics pertaining to a proceeding for adoption under this Chapter.

~~(b) Notwithstanding G.S. 48-1-101, for purposes of this Article, "adult" means an individual who has attained 21 years of age.~~"

SECTION 3. G.S. 48-9-104 reads as rewritten:

"**§ 48-9-104. Release of identifying ~~information.~~information; confidential intermediary services.**

(a) Except as provided in this section or in G.S. 48-9-109(2) or (3), no person or entity shall release from any records retained and sealed under this Article the name, address, or other information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105.

(b) A child placing agency licensed by the Department or a county department of social services may agree to act as a confidential intermediary for ~~a biological parent or adult adoptee or adult lineal descendant of a deceased adoptee, without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or facilitate contact or share identifying information with adult adoptees, adult lineal descendants of deceased adoptees, and biological parents with the written consent of all parties to the contact or the sharing of information.~~ any of the following:

(1) A biological parent.
(2) An adult adoptee.
(3) An adult biological sibling of an adult adoptee.
(4) An adult biological half sibling of an adult adoptee.
(5) An adult family member of a deceased biological parent.
(6) An adult family member of a deceased adoptee. .

An agency may act as a confidential intermediary without appointment by the court pursuant to G.S. 48-9-105, in order to obtain and share nonidentifying birth family health information or to facilitate contact or share identifying information with any person listed in subdivisions (1) through (6) of this subsection with the written consent of all parties to the contact or the sharing of information. Written consent of the biological parent is required if the biological parent is living at the time any party described in subdivisions (2) through (6) of this subsection seeks to contact or share identifying information with any other party described in subdivisions (2) through (6) of this subsection. Further, ~~a child placing agency licensed by the Department or a county department of social services~~an agency may agree to act as a confidential intermediary for the adoptive parents of a minor adoptee, or the guardian of a minor adoptee without appointment by the court pursuant to G.S. 48-9-105, to obtain and share nonidentifying birth family health information. An agency providing confidential intermediary services shall contact individuals in a manner reasonably calculated to prevent incidental disclosure of confidential information. An agency that agrees to provide confidential intermediary services may charge a reasonable fee for doing so, which fee must be pursuant to written agreement signed by the individual to be charged. The Division shall establish guidelines for confidential intermediary services.

(c) For purposes of this section only, the term 'family member' means a spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

(d) If in the provision of confidential intermediary services a child placing agency licensed by the Department or a county department of social services determines that the person who is the subject of the search is deceased, the agency may obtain a copy of the death certificate pursuant to G.S. 130A-93 and deliver it to the person who requested the services."

SECTION 4. G.S. 130A-93 is amended by adding a new subsection to read:

"(c2) A child placing agency licensed by the Department of Health and Human Services or a county department of social services acting as a confidential intermediary in accordance with G.S. 48-9-104 shall be entitled upon request to a certified copy of a death certificate."

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

HOUSE BILL 1463:
Expand Access/Confidential Intermediaries

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	April 14, 2009
Introduced by:	Reps. Dickson, Wilkins, Harrell, Farmer-Butterfield	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1463 allows adult biological siblings of adult adoptees, adult biological half siblings of adult adoptees, adult family members of deceased adoptees, and adult family members of deceased biological parents to have access to confidential intermediary services upon the consent of the parties. The bill also allows an agency acting as a confidential intermediary to obtain a copy of a death certificate of the person who is the subject of the search and deliver it to the person requesting services.***

BILL ANALYSIS:

Section 1 of House Bill 1463 amends the definition of "confidential intermediary" to define the term as a licensed adoption agency staff person who may act as a third party to facilitate the sharing of information authorized by G.S. 48-9-104. This section also deletes the definition of "lineal descendant of a deceased adoptee".

Section 2 deletes the provision that defined "adult" as someone 21 or older for purposes of the provisions relating to the use of confidential intermediaries.

Section 3 amends the list of people authorized to use confidential intermediary services to include an adult biological sibling of an adult adoptee, an adult biological half sibling of an adult adoptee, an adult family member of a deceased biological parent, and an adult family member of a deceased adoptee. For purposes of this section, "family member" means spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

If the biological parent is living, written consent of the biological parent is required before contact or sharing of identifying information with any other party.

If a confidential intermediary determines that the person who is the subject of the search is deceased, they may obtain a copy of the death certificate and deliver it to the person who requested the services.

Section 4 amends the statutes related to access to vital records to authorize agencies providing confidential intermediary services to obtain a copy of the death certificate.

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1463 A BILL TO BE ENTITLED AN ACT ALLOWING ADULT BIOLOGICAL SIBLINGS OF ADULT ADOPTEES, ADULT BIOLOGICAL HALF SIBLINGS OF ADULT ADOPTEES, ADULT FAMILY MEMBERS OF DECEASED ADOPTEES, AND ADULT FAMILY MEMBERS OF DECEASED BIOLOGICAL PARENTS TO HAVE ACCESS TO CONFIDENTIAL INTERMEDIARY SERVICES UPON THE CONSENT OF THE PARTIES AND TO ALLOW AN AGENCY ACTING AS A CONFIDENTIAL INTERMEDIARY TO OBTAIN A COPY OF A DEATH CERTIFICATE OF THE PERSON WHO IS THE SUBJECT OF THE SEARCH AND DELIVER IT TO THE PERSON REQUESTING SERVICES.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, April 22, 2009

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, April 22, 2009, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Lucy Allen, Angela Bryant, Mitch Gillespie, Phil Haire, Dewey Hill, Mark Hilton, Sarah Stevens, Joe Tolson, and Winkie Wilkins. Staff in attendance: Brenda Carter, Peter Capriglione and Susan Seitz. House Sergeant-at-Arms assisting: Jerald Perry, Bob Rossi and John Brandon. House Pages: Kassy Green from Sampson County and Benjamin Chrome from Sampson County sponsored Tarheel Challenge Academy. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. The following bills were placed before the Committee:

House Bill 472–A BILL TO BE ENTITLED: an act to provide for the fair and reliable imposition of capital sentences. Rep. Coates moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Womble to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 3*)

House Bill 1476–A BILL TO BE ENTITLED: an act to clarify when a claimant against an entity protected by governmental immunity has an adequate remedy at law. The Chair called upon the bill sponsor Rep. Blue to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Bryant was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 4*)

House Bill 1255–A BILL TO BE ENTITLED: an act to provide that when sentencing a defendant convicted of a sex offense and upon request of the

district attorney, The court may enter a permanent no contact order prohibiting any future contact of a convicted sex offender with the crime victim if the court determines that appropriate grounds exist for the order. The Chair called upon the bill sponsor Rep. Holloway to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 5*)

House Bill 1076–A BILL TO BE ENTITLED: an act to allow district courts to supervise defendants convicted in superior court who are assigned to drug treatment courts or problem-solving courts. The Chair called upon the bill sponsor Rep. Wiley to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Haire was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 6*)

House Bill 1320–A BILL TO BE ENTITLED: an act to make the use of a mobile phone an aggravating factor when charged with a violation of motor vehicle law. The Chair called upon the bill sponsor Rep. Starnes to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. The Chair and the committee felt the bill needed to be place in a sub committee to work out the language in the bill. Chairman Faison appointed Rep. Stevens to chair, as well as Rep. Haire, Wilkins and Tillis to serve on the committee. The Bill is attached. (*Attachment 7*)

House Bill 283–A BILL TO BE ENTITLED: an act clarifying the definition of broadband internet access in North Carolina. Rep. Coates moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Alexander to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. The Bill is attached. (*Attachment 8*)

With no further time for anymore business to come before the committee Chairman Faison announced the adjournment of this meeting and the reconvening of this Committee 20 minutes after session. The meeting adjourned at 1:45 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, April 22, 2009
1:00 PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	HB 472	North Carolina Racial Justice Act.	Representative Womble
2.	HB 1476	Gov. Immunity/Adequacy of Remedies.	Representative Blue
3.	HB 1255	Sex Offenders/Permanent No Contact Order.	Representative Holloway
4.	HB 1076	Supervision of Certain Defendants.	Representative Wiley
5.	HB 1320	Cell Phone Use/Aggravating Factor in Crashes.	Representative Starnes
6.	HB 283	Clarify Broadband Internet Access Definition.	Representative Alexander
7.	HB 421	Use of Deadly Force/SBI Investigations.	Representative Alexander

4. **Adjourn**

VISITOR REGISTRATION SHEET

22 April 09

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan Burch	Guilford County - Drug Court
Ed Branscomb	Elon Univ. School of Law (Burch intern)
Justin ERVIN	Elon U School of Law (w/ J. Burch)
Carri Munns	Guilford County - Drug Court
Jay Ferguson	Attorney - Durham
Gerda Stein	CDPL
Amanda Lattanzio	PFADP
Paul Pulley	NC Advocates for Justice
Kelly Graham	NC Advocates for Justice

VISITOR REGISTRATION SHEET

22 April 09

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
GRANT GOINGS	CITY OF WILSON
Jim Cauley	Rose Rand Wallace for City of Wilson
Cathy Rice	Action Audits
Penny Griffin	School of Gov.
Charmaine Fuller	Carolina Justice Policy Center
John P. Conner	Murder Victims Families for Reconciliation (MVFR)
Sarah Preston	ACLU-NC
Lao Russell	CYPC
Mark Benson	AT&T
Lynn Holmes	RHC/NCCTA
Wheaton Casey	Guilford County - 18th Judicial Drug Court - Pretrial Services

HOUSE BILL 472*

Short Title:	North Carolina Racial Justice Act.	(Public)
Sponsors:	Representatives Womble, Parmon, Luebke, Harrison (Primary Sponsors); Adams, K. Alexander, M. Alexander, Allen, Bell, Blue, Bordsen, Bryant, Carney, Coates, Cotham, Dickson, Earle, England, Faison, Farmer-Butterfield, Fisher, E. Floyd, Glazier, Hall, Harrell, Hughes, Insko, Jeffus, Jones, Lucas, Mackey, Martin, Michaux, Mobley, Pierce, Ross, Tarleton, Wainwright, Weiss, Wilkins, and Wray.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary I.	

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE FAIR AND RELIABLE IMPOSITION OF CAPITAL SENTENCES.

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 101.

"North Carolina Racial Justice Act.

"**§ 15A-2010. North Carolina Racial Justice Act.**

No person shall be subject to or given a sentence of death, or shall be executed pursuant to any judgment that was sought or obtained on the basis of race.

"**§ 15A-2011. Proof of racial discrimination.**

(a) A finding that race was the basis of the decision to seek or impose a death sentence may be established if the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large at the time the death sentence was sought or imposed.

(b) Evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large at the time the death sentence was sought or imposed may include statistical evidence or other evidence, including, but not limited to, sworn testimony of attorneys, prosecutors, law enforcement officers, jurors, or other members of the criminal justice system or both, that irrespective of statutory factors, death sentences were sought or imposed significantly more frequently:

(1) Upon persons of one race than upon persons of another race, or as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race, or that race was a significant factor in decisions to exercise peremptory challenges during jury selection; and

(2) That the State is unable to justify the racial disparities demonstrated by the defendant by identifying other, legitimate sentencing considerations that when tested statistically, adequately explain the apparent racial disparities.

(c) The defendant has the burden of proving that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large at the time the death sentence was sought or imposed. The State may offer evidence in rebuttal of the claims or evidence of the defendant. The State may rebut a statistical showing of statewide racial disparities by introducing statistical evidence or other evidence demonstrating that no racial discrimination occurred in the county or the prosecutorial district at the time the death penalty was sought or imposed. The court may consider evidence of any program, implemented prior to the defendant's trial for the purpose of eliminating racial disparities, in its evaluation of whether the State has adequately addressed those disparities.

"**§ 15A-2012. Hearing procedure.**

(a) The defendant shall state with particularity how the evidence supports a claim that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large at the time the death sentence was sought or imposed. The claim shall be raised by the defendant at the pretrial conference or in postconviction proceedings. The court shall schedule a hearing on the claim and shall prescribe a time for the submission of evidence by both parties. If the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large at the time the death sentence was sought or imposed, the court shall order that a death sentence shall not be sought, or that the death sentence imposed by the judgment shall be vacated and the defendant resentenced to life imprisonment without the possibility of parole.

(b) Notwithstanding any other provision or time limitation contained in Article 89 of Chapter 15A of the General Statutes, a defendant may seek relief from the defendant's death sentence upon the ground that racial considerations played a significant part in the decision to seek or impose a death sentence by filing a motion seeking relief. The motion shall be filed within one year of the effective date of this act.

Except as specifically stated in subsections (a) and (b) of this section, the procedures and hearing on the motion seeking relief from a death sentence upon the ground that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large at the time the death sentence was sought or imposed, shall follow and comply with G.S. 15A-1420, 15A-1421, and 15A-1422."

SECTION 2. This act is effective when it becomes law and applies retroactively.

HOUSE BILL 472:
North Carolina Racial Justice Act

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	April 22, 2009
Introduced by:	Reps. Womble, Parmon, Luebke, Harrison	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to First Edition H472-CSRV-9		

SUMMARY: House Bill 472 would provide a process by which statistical evidence could be used to establish that race was the basis for seeking or obtaining the death penalty. This proposed committee substitute reflects changes made by the subcommittee to which the bill was referred.

[As introduced, this bill was identical to S461, as introduced by Sen. McKissick, which is currently in Senate Judiciary I.]

CURRENT LAW: In 1987, the United States Supreme Court decided the case of *McCleskey v. Kemp*. In that case, a black male defendant was convicted of two counts of armed robbery and murder in the state of Georgia. The victim was a white male. McCleskey sought relief from his death sentence on the basis that the Georgia sentencing process was administered in a racially discriminatory manner in violation of the Equal Protection Clause of the United States Constitution. McCleskey supported his claim with a statistical study indicating that the death penalty in Georgia was imposed more often on black defendants and killers of white victims than on white defendants and killers of black victims. McCleskey argued that the study indicated that black defendants who killed white victims had the greatest likelihood of receiving the death penalty. In an opinion authored by Justice Lewis Powell, the majority rejected McCleskey's claims, stating that the study failed to establish that any of the decision makers in McCleskey's specific case acted with discriminatory purpose in violation of the Equal Protection Clause.[1]

Under McCleskey, to prevail on a claim that the administration of the capital punishment system violates the Equal Protection Clause, the petitioner must prove that the decision makers in the petitioner's specific case acted with discriminatory purpose and statistical information about the general administration of the capital punishment system is insufficient to support an inference that any of the decision makers in the case acted with discriminatory purpose.

In response to the McCleskey decision, Congress and several state legislatures, including the North Carolina General Assembly, considered versions of the Racial Justice Act. In 1998, Kentucky became the first state to enact the Racial Justice Act. The North Carolina General Assembly last considered a similar Racial Justice Act during the 2007 Regular Session (House Bill 1291: Racial Justice Act), but did not enact it.

BILL ANALYSIS: House Bill 472, the North Carolina Racial Justice Act, provides a process by which statistical evidence could be used to establish that race was the basis for seeking or obtaining the death penalty.

Pretrial Procedure:

House Bill 472 provides that a finding that race was the basis of the decision to seek or impose the death penalty may be established if the court finds that race was a significant factor in decisions to seek or

[1] Excerpted from Race and the Death Penalty after McCleskey: A Case Study of Kentucky's Racial Justice Act, Washington and Lee Journal of Civil Rights and Social Justice, Fall (2005).

impose the death penalty in the county, the prosecutorial district, or the State at large, at the time the death penalty was sought or imposed. Evidence relevant to establish a finding that race was a significant factor may include statistical or other evidence, including sworn testimony of members of the criminal justice system that:

- the death penalty was sought or imposed significantly more frequently for persons of one race than for persons of another race
- the death penalty was sought or imposed significantly more frequently as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race; or
- that race was a significant factor in decisions to exercise peremptory challenges during jury selection

The defendant would have the burden of proving that race was a significant factor in decisions to seek or impose the death penalty in the county, the prosecutorial district, or the State at large, at the time the death penalty was sought or imposed. The claim could be raised by the defendant at the pretrial conference or in postconviction proceedings, and the court would be required to schedule a hearing on the claim and set a time for the submission of evidence by both parties. If the court finds that race was a significant factor, the court would order that the death penalty not be sought or that a death sentence not be carried out and the defendant resentenced to life imprisonment without parole.

A defendant on death row would be allowed a period of one year from the effective date of the bill to file a motion seeking relief from his or her death sentence upon the ground that racial considerations played a significant part in the decision to seek or impose a death sentence. Except as otherwise specified in the bill, the existing provisions of the State's Criminal Procedure Act regarding procedures and hearing on motions for appropriate relief would apply, including the appointment of counsel for indigent defendants and review upon appeal.

EFFECTIVE DATE: The bill would become effective when it becomes law and its provisions would apply retroactively.

Jeff Hudson substantially contributed to this summary.

H472-SMRV-18(CSRV-9) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 472*
PROPOSED COMMITTEE SUBSTITUTE H472-CSRV-9 [v.2]

4/21/2009 3:38:00 PM

Short Title: North Carolina Racial Justice Act. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE FAIR AND RELIABLE IMPOSITION OF CAPITAL SENTENCES.

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 101.

"North Carolina Racial Justice Act.

"**§ 15A-2010. North Carolina Racial Justice Act.**

No person shall be subject to or given a sentence of death, or shall be executed pursuant to any judgment that was sought or obtained on the basis of race.

"**§ 15A-2011. Proof of racial discrimination.**

(a) A finding that race was the basis of the decision to seek or impose a death sentence may be established if the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large at the time the death sentence was sought or imposed.

(b) Evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large at the time the death sentence was sought or imposed may include statistical evidence or other evidence, including, but not limited to, sworn testimony of attorneys, prosecutors, law enforcement officers, jurors, or other members of the criminal justice system or both, that irrespective of statutory factors one or more of the following applies:

(1) Death sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race.

(2) Death sentences were sought or imposed significantly more frequently as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race.

(3) Race was a significant factor in decisions to exercise peremptory challenges during jury selection.

A juror's testimony under this subsection shall be consistent with G.S. 8C-1, Rule 606(b).

(c) The defendant has the burden of proving that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large at the time the death sentence was sought or imposed. The State may offer evidence in rebuttal of the claims or evidence of the defendant. The State may rebut a statistical

showing of statewide racial disparities by introducing statistical evidence or other evidence demonstrating that no racial discrimination occurred in the county or the prosecutorial district at the time the death penalty was sought or imposed. The court may consider evidence of any program, implemented prior to the defendant's trial for the purpose of eliminating racial disparities, in its evaluation of whether the State has adequately addressed those disparities.

"**§ 15A-2012. Hearing procedure.**

(a) The defendant shall state with particularity how the evidence supports a claim that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large at the time the death sentence was sought or imposed. The claim shall be raised by the defendant at the pretrial conference or in postconviction proceedings. The court shall schedule a hearing on the claim and shall prescribe a time for the submission of evidence by both parties. If the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large at the time the death sentence was sought or imposed, the court shall order that a death sentence shall not be sought, or that the death sentence imposed by the judgment shall be vacated and the defendant resentenced to life imprisonment without the possibility of parole.

(b) Notwithstanding any other provision or time limitation contained in Article 89 of Chapter 15A of the General Statutes, a defendant may seek relief from the defendant's death sentence upon the ground that racial considerations played a significant part in the decision to seek or impose a death sentence by filing a motion seeking relief. The motion shall be filed within one year of the effective date of this act.

Except as specifically stated in subsections (a) and (b) of this section, the procedures and hearing on the motion seeking relief from a death sentence upon the ground that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the State at large at the time the death sentence was sought or imposed, shall follow and comply with G.S. 15A-1420, 15A-1421, and 15A-1422."

SECTION 2. This act is effective when it becomes law and applies retroactively.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 472 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE FAIR AND RELIABLE IMPOSITION OF CAPITAL SENTENCES.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

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

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

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1476

Short Title:	Gov. Immunity/Adequacy of Remedies.	(Public)
Sponsors:	Representatives Blue, Glazier (Primary Sponsors); Faison, Harrison, and Lucas.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary II.	

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHEN A CLAIMANT AGAINST AN ENTITY PROTECTED BY GOVERNMENTAL IMMUNITY HAS AN ADEQUATE REMEDY AT LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"**§ 1-13.1. Adequacy of remedies in actions against local governments, local school boards, and State departments and agencies.**

A claimant has no adequate remedy under State law and shall not be restrained from pursuing any relief available under the Constitution of the United States and the Constitution of North Carolina when (i) the actions of any agent or employee of a local government, local school board, or State department or agency within the scope of the agent's or employee's authority or within the course of employment of the employee result in death or injury to person or property, (ii) no waiver of immunity is found to apply by a court of competent jurisdiction under any provision of the General Statutes, and (iii) no other claim for relief that would give the claimant full recovery of damages is available under State law."

SECTION 2. This act is effective when it becomes law and applies to causes of action arising on or after that date.

HOUSE BILL 1476:
Gov. Immunity/Adequacy of Remedies

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary II	**Date:**	April 22, 2009
Introduced by:	Reps. Blue, Glazier	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1476 clarifies when a claimant against an entity protected by governmental immunity has an adequate remedy at law.

CURRENT LAW: NC case law states that a claim under the Constitution of North Carolina is only available "in the absence of an adequate state remedy"[1]. In *Craig v. New Hanover Board of Education*[2], the North Carolina Court of Appeals ruled that even though the plaintiff's claim of relief under state law was barred by governmental immunity, the claimant still had an "adequate remedy at law" and therefore could not make a constitutional claim for relief against the school board.

BILL ANALYSIS: House Bill 1476 would effectively overrule the *Craig* decision by stating that a claimant has no adequate remedy under State law and shall not be restrained from pursuing any relief available under the Constitution of the United States and the Constitution of North Carolina when all three of the following are true:

1. The actions of any agent or employee of a local government, local school board, or State department or agency within the scope of the agent's or employee's authority or within the course of employment of the employee result in death or injury to person or property.
2. No waiver of immunity is found to apply by a court of competent jurisdiction under any provision of the General Statutes.
3. No other claim for relief that would give the claimant full recovery of damages is available under State law.

EFFECTIVE DATE: This act is effective when it becomes law and applies to causes of action arising on or after that date.

H1476-SMSA-47(e1) v1

[1] *Corum v. University of North Carolina 330 NC 761 (1992).*
[2] *Craig v. new Hanover Board of Education 185 NC App 641(2007).*

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1476 A BILL TO BE ENTITLED AN ACT TO CLARIFY WHEN A CLAIMANT AGAINST AN ENTITY PROTECTED BY GOVERNMENTAL IMMUNITY HAS AN ADEQUATE REMEDY AT LAW.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 1255

Short Title:	Sex Offenders/Permanent No Contact Order.	(Public)
Sponsors:	Representatives Holloway, Wiley, Underhill, Parmon (Primary Sponsors); Blackwood, Blust, Cleveland, Coates, Faison, Guice, Gulley, Hilton, Howard, Hurley, Insko, Johnson, Justice, Justus, Langdon, Moore, Neumann, Setzer, Spear, Starnes, and Wray.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary III.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT WHEN SENTENCING A DEFENDANT CONVICTED OF A SEX OFFENSE AND UPON REQUEST OF THE DISTRICT ATTORNEY, THE COURT MAY ENTER A PERMANENT NO CONTACT ORDER PROHIBITING ANY FUTURE CONTACT OF A CONVICTED SEX OFFENDER WITH THE CRIME VICTIM IF THE COURT DETERMINES THAT APPROPRIATE GROUNDS EXIST FOR THE ORDER.

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 81D.

"Permanent No Contact Order Against Convicted Sex Offender.

"**§ 15A-1340.50. Permanent no contact order prohibiting future contact by convicted sex offender with crime victim.**

(a) The following definitions apply in this Article:

(1) Permanent no contact order. – A permanent injunction that prohibits any contact by a defendant with the victim of the sex offense for which the defendant is convicted. The duration of the injunction is the lifetime of the defendant.

(2) Sex offense. – Any criminal offense that requires registration under Article 27A of Chapter 14 of the General Statutes.

(3) Victim. – The person against whom the sex offense was committed.

(b) When sentencing a defendant convicted of a sex offense, the judge, at the request of the district attorney, shall determine whether to issue a permanent no contact order. The judge shall order the defendant to show cause why a permanent no contact order shall not be issued and shall hold a show cause hearing as part of the sentencing procedures for the defendant.

(c) The defendant may move to dismiss the order.

(d) The judge sentencing the defendant is the trier of fact regarding the show cause hearing.

(e) At the conclusion of the show cause hearing the judge shall enter a finding for or against the defendant. If the judge determines that reasonable grounds exist for the victim to fear any future contact with the defendant, the judge shall issue the permanent no contact order. The judge shall enter written findings of fact and the grounds on which the permanent no contact order is issued. The no contact order shall be incorporated into the judgment imposing the sentence on the defendant for the conviction of the sex offense.

(f) The order may be enforced through either civil or criminal contempt proceedings pursuant to Chapter 5A of the General Statutes.

(g) The remedy provided by this Article is not exclusive but is in addition to other remedies provided under law."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

HOUSE BILL 1255:
Sex Offenders/Permanent No Contact Order

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	April 22, 2009
Introduced by:	Reps. Holloway, Wiley, Underhill, Parmon	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1255 provides that when sentencing a defendant convicted of a sex offense and upon request of the district attorney, the court may enter a permanent no contact order prohibiting any future contact of a convicted sex offender with the crime victim if the court determines that appropriate grounds exist for the order.

BILL ANALYSIS:

House Bill 1255 creates a new Article 81D in Chapter 15A of the General Statutes, entitled "Permanent No Contact Order Against Convicted Sex Offender".

The bill creates a new G.S. 15A-1340.50, which authorizes a judge, when sentencing a defendant convicted of a sex offense, and at the request of the district attorney, to determine whether to issue a permanent no contact order prohibiting any contact by the defendant with the victim of the sex offense for which the defendant is convicted.

The defendant is ordered to show cause why the order should not be issued and the judge shall hold a show cause hearing as part of the sentencing procedures for the defendant. The defendant may move to dismiss the order. The judge sentencing the defendant is the trier of fact regarding the show cause hearing.

After the show cause hearing the judge shall enter a finding for or against the defendant. If the judge determines that reasonable grounds exist for the victim to fear any future contact with the defendant, the judge shall issue the order. The judge shall enter written findings of fact and the grounds on which the permanent no contact order is issued. The order shall be incorporated into the judgment imposing the sentence on the defendant for the conviction of the sex offense.

The order may be enforced through either civil or criminal contempt proceedings pursuant to Chapter 5A of the General Statutes. The remedy of a permanent no contact order is not exclusive but is in addition to remedies provided under law.

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1255 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT WHEN SENTENCING A DEFENDANT CONVICTED OF A SEX OFFENSE AND UPON REQUEST OF THE DISTRICT ATTORNEY, THE COURT MAY ENTER A PERMANENT NO CONTACT ORDER PROHIBITING ANY FUTURE CONTACT OF A CONVICTED SEX OFFENDER WITH THE CRIME VICTIM IF THE COURT DETERMINES THAT APPROPRIATE GROUNDS EXIST FOR THE ORDER.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 1076*

Short Title:	Supervision of Certain Defendants.	(Public)
Sponsors:	Representatives Wiley, Jones, Harrison (Primary Sponsors); Blackwood, Blust, Faison, Jeffus, and Lucas.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary III.	

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW DISTRICT COURTS TO SUPERVISE DEFENDANTS CONVICTED IN SUPERIOR COURT WHO ARE ASSIGNED TO DRUG TREATMENT COURTS OR PROBLEM-SOLVING COURTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-271 is amended by adding a new subsection to read:

"(f) The superior court has exclusive jurisdiction over all hearings to revoke probation pursuant to G.S. 15A-1345(e) in which the district court is supervising a drug treatment court or a problem-solving criminal court probation judgment under G.S. 7A-272(e)."

SECTION 2. G.S. 7A-272 is amended by adding two new subsections to read:

"(e) With the consent of the chief district court judge and the senior resident superior court judge, the district court has jurisdiction to preside over the supervision of probation judgments entered in superior court in which the defendant is required to participate in a drug treatment court program pursuant to G.S. 15A-1343(b1)(2b) or a problem-solving criminal court, as defined in subsection (f) of this section, or is participating in the drug treatment court pursuant to a deferred prosecution agreement under G.S. 15A-1341(a2). The district court may modify or extend the probation judgment, but jurisdiction to revoke probation supervised under this subsection is as provided in G.S. 7A-271(f).

(f) As used in subsection (e) of this section, the term "problem-solving criminal court" refers to a court program, other than a drug treatment court established pursuant to Article 62 of Chapter 7A of the General Statutes, in which a criminal defendant, either as a condition of probation or pursuant to a deferred prosecution agreement under G.S. 15A-1341, is ordered to participate in specified activities designed to address underlying problems, such as substance abuse or mental illness, that contribute to the person's criminal activity. The ordered activities shall, at a minimum, require the person to participate in treatment and attend regular court sessions of the treatment court over an extended period of time. The senior resident superior court judge and the chief district court judge shall agree in writing that the problem-solving criminal court is being established before jurisdiction established by subsection (f) may be exercised by the district court."

SECTION 3. G.S. 15A-1344(a) reads as rewritten:

"(a) Authority to Alter or Revoke. – Except as provided in subsection (a1) or (b), probation may be reduced, terminated, continued, extended, modified, or revoked by any judge entitled to sit in the court which imposed probation and who is resident or presiding in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the sentence of probation was imposed, where the probationer violates probation, or where the probationer resides. Upon a finding that

an offender sentenced to community punishment under Article 81B has violated one or more conditions of probation, the court's authority to modify the probation judgment includes the authority to require the offender to comply with conditions of probation that would otherwise make the sentence an intermediate punishment. The district attorney of the prosecutorial district as defined in G.S. 7A-60 in which probation was imposed must be given reasonable notice of any hearing to affect probation substantially."

SECTION 4. G.S. 15A-1344 is amended by adding a new subsection to read:

"(a1) Authority to Supervise Probation in Drug Treatment Court or Problem-Solving Criminal Court. – Jurisdiction to supervise and modify probation imposed in cases in which the offender is required to participate in a drug treatment court or a problem-solving criminal court is as provided in G.S. 7A-272(e) and (f) and G.S. 7A-271(f). Proceedings to modify or revoke probation in such cases shall be held in the county in which the drug treatment court or problem-solving court is located."

SECTION 5. This act becomes effective October 1, 2009, and applies to probation judgments entered or deferred prosecution agreements executed on or after that date.

HOUSE BILL 1076:
Supervision of Certain Defendants

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	April 21, 2009
Introduced by:	Reps. Wiley, Jones, Harrison	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1076 would authorize a district court to supervise the probation of a defendant who is convicted in superior court and required to participate in a drug treatment court program or a problem-solving criminal court program or who is participating in a drug treatment court program pursuant to a deferred prosecution agreement.***

[As introduced, this bill was identical to S851, as introduced by Sen. Vaughan, which is currently in Senate Judiciary II.]

CURRENT LAW: Under current law, the district court has jurisdiction over the trial of misdemeanor criminal actions. With the consent of the presiding district court judge, the prosecutor, and the defendant, the district court also has jurisdiction to accept a defendant's plea of guilty or no contest to a Class H or I felony under certain circumstances. Generally, the superior court has jurisdiction over all criminal actions not assigned to the district court. The superior court also jurisdiction over appeals from the district court.

BILL ANALYSIS: House Bill 1076 would provide that, with the consent of the chief district court judge and the senior resident superior court judge, the district court would supervise the probation of a defendant who is convicted in superior court and required to participate in a drug treatment court program or a problem-solving criminal court program or who is participating in a drug treatment court program pursuant to a deferred prosecution agreement. The district court would be authorized to modify or extend probation, but the authority to revoke probation would remain with the superior court.

Under House Bill 1076, a "problem-solving criminal court" is a court program, other than a drug treatment court program, in which a criminal defendant must participate in specified activities designed to address underlying problems that contribute to the person's criminal behavior, as a condition of the defendant's probation or deferred prosecution.

EFFECTIVE DATE: The bill would become effective October 1, 2009, and apply to probation judgments entered or deferred prosecution agreements executed on or after that date.

Jeffrey Hudson, counsel to Senate Judiciary II, substantially contributed to this summary.

H1076-SMRV-42(e1) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1076 A BILL TO BE ENTITLED AN ACT TO ALLOW DISTRICT COURTS TO SUPERVISE DEFENDANTS CONVICTED IN SUPERIOR COURT WHO ARE ASSIGNED TO DRUG TREATMENT COURTS OR PROBLEM-SOLVING COURTS.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 1320

Short Title:	Cell Phone Use/Aggravating Factor in Crashes.	(Public)
Sponsors:	Representatives Starnes; and Insko.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary III.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE THE USE OF A MOBILE PHONE AN AGGRAVATING FACTOR WHEN CHARGED WITH A VIOLATION OF MOTOR VEHICLE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-166.3. Mobile phone use aggravating factor in moving motor vehicle violations.**

There shall be an additional fine of one hundred dollars ($100.00) added to any fine assessed by the court for a conviction of a charge resulting from a moving motor vehicle violation where mobile phone use is noted as a distraction."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

HOUSE BILL 1320:
Cell Phone Use/Aggravating Factor in Crashes

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	April 21, 2009
Introduced by:	Rep. Starnes	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1320 would make the use of a mobile phone an aggravating factor in moving motor vehicle violations, and impose an additional $100 fine for conviction of a charge where use of a mobile phone is noted as a distraction.***

CURRENT LAW: North Carolina law currently prohibits the use of a mobile telephone or any additional technology associated with a mobile telephone by a person under the age of 18 while operating a motor vehicle (G.S. 20-137.3), or by a person operating a school bus (G.S. 20-137.4), with certain limited exceptions. "Mobile telephone" is a device used by subscribers and other users of wireless telephone service to access the service, and includes hand held and hands-free devices. "Additional technology" includes such things as cameras, electronic mail, music, the Internet, or games.

In general, a moving violation is a violation of a traffic law concerning the operation of a vehicle in motion. Moving violations would include offenses such as speeding, running a red light and failing to yield. Nonmoving violations typically deal with offenses involving parking (parking at an expired meter or in a handicap spot), vehicle maintenance (driving with a broken taillight or a burned-out headlight), or vehicle modifications (nonstandard/under-vehicle lights or window tinting).

BILL ANALYSIS: House Bill 1320 would authorize the court to impose an additional fine of $100 when a person is convicted of a charge resulting from a moving violation where mobile phone use is noted as a distraction.

EFFECTIVE DATE: The bill would become effective December 1, 2009 and apply to offenses committed on or after that date.

H1320-SMRV-43(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 283

Short Title:	Clarify Broadband Internet Access Definition.	(Public)
Sponsors:	Representatives K. Alexander, Coates, Tillis, Faison (Primary Sponsors); Allred, Bryant, Gulley, Hughes, Johnson, and Lucas.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Public Utilities.	

February 25, 2009

A BILL TO BE ENTITLED

AN ACT CLARIFYING THE DEFINITION OF BROADBAND INTERNET ACCESS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-3(1) reads as rewritten:

"(1) 'Broadband service' means ~~any service that consists of or includes a high-speed access capability to transmit at a rate of not less than 200 kilobits per second in either the upstream or downstream direction and either (i) is used to provide access to the Internet, or (ii) provides computer processing, information storage, information content, or protocol conversion, including any service applications or information service provided over such high-speed access service. "Broadband service" does not include intrastate~~ a connection to the Internet that provides capacity for transmission at an average speed of at least 1.5 megabits per second downstream and at least 384 kilobits per second upstream, regardless of the technology or medium used to provide the connection. The term includes a connection to the Internet provided by wireless technology, copper wire, fiber-optic cable, coaxial cable, broadband over power lines, or other facilities or future technologies. The term does not include any of the following:

a. Value added services in which computer processing applications are used to act on the form, content, code, or protocol of any information transmitted.

b. Value added services providing text, graphic, video, or audio program content for a purpose other than transmission.

c. The transmission of video programming or other programming provided by (or generally considered comparable to programming provided by) a television broadcast station or a radio broadcast station, including cable TV, direct broadcast satellite, and digital television.

d. Interstate service that was tariffed by the Commission and in effect as of the effective date of this subdivision."

SECTION 2. G.S. 143B-437.45(4) reads as rewritten:

"(4) High-speed broadband Internet access. – Internet access with transmission speeds ~~that are consistent with requirements for high-speed broadband Internet access as defined by the Federal Communications Commission from time to time.~~ at an average speed of at least 1.5 megabits per second

downstream and at least 384 kilobits per second upstream, regardless of the technology or medium used to provide the connection. The term includes a connection to the Internet provided by wireless technology, copper wire, fiber-optic cable, coaxial cable, broadband over power lines, or other facilities or future technologies. The term does not include any of the following:

a. Value added services in which computer processing applications are used to act on the form, content, code, or protocol of any information transmitted.

b. Value added services providing text, graphic, video, or audio program content for a purpose other than transmission.

c. The transmission of video programming or other programming provided by (or generally considered comparable to programming provided by) a television broadcast station or a radio broadcast station, including cable TV, direct broadcast satellite, and digital television."

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

HOUSE BILL 283:
Clarify Broadband Internet Access Definition

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Public Utilities	**Date:**	April 15, 2009
Introduced by:	Reps. K. Alexander, Coates, Tillis, Faison	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to First Edition H283-CSRV-18		

SUMMARY: This PCS for House Bill 283 amends the definition of high-speed broadband Internet access as it pertains to the duties of the e-NC Authority, and directs the Authority to make efforts to ensure the availability of advanced broadband service by 2012, and full broadband service by 2018.

CURRENT LAW: The e-NC Authority was created by the N.C. General Assembly to continue the work of the Rural Internet Access Authority, and to serve as the central rural and urban distressed areas Internet access planning and policy body of the State. The Authority has the duty of continuing efforts to ensure that high-speed broadband Internet access remains available to citizens of the State at affordable prices in rural counties and urban distressed areas. The e-NC Authority is scheduled to be dissolved on December 31, 2011.

BILL ANALYSIS: The bill would expand the definition of high-speed broadband Internet access as it pertains to the duties of the e-NC Authority, so that there would be three levels of service:

- **High-speed broadband** would be a service delivering data to the end user transmitted at a speed of ***at least 5 megabits per second symmetrical.***
- **Advanced broadband** would be a service delivering data to the end user transmitted at a speed of ***at least 45 megabits per second symmetrical.***
- **Full broadband service** would be a service delivering data to the end user transmitted at a speed of ***at least 100 megabits per second symmetrical.***

The bill amends the statutory duties of the e-NC Authority to require the Authority to make efforts to assure the availability of advanced broadband service at affordable prices to citizens in rural and urban distressed areas of the State by 2012, and the availability of full broadband service by 2018.

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

H283-SMRV-36(CSRV-18) v1

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, April 22, 2009

The House Committee on Ways and Means//Broadband met on Wednesday, April 22, 2009, in Room 415 of the Legislative Office Building 20 mins. after Session. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Lucy Allen, Angela Bryant, Mitch Gillespie, Jim Gulley, Mark Hilton, Sarah Stevens and Winkie Wilkins. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Seitz. House Sergeant-at-Arms assisting: Jerald Perry, John Brandon and Bob Rossi. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, members and visitors. The following bills were placed before the Committee:

In continuation from the one o'clock meeting: **House Bill 283–A BILL TO BE ENTITLED: an act clarifying the definition of broadband internet access in North Carolina was place before the committee again.** The Chair felt the bill needed to be place in a sub committee to work out the language in the bill. Chairman Faison appointed Rep. Bryant to Chair, as well as Rep. Wilkins and Tillis to serve on the committee. The Bill is attached. (*Attachment 3*)

House Bill 587–A BILL TO BE ENTITLED: an act to amend the North Carolina Cemetery Act by eliminating the ability to post a performance bond in lieu of deposits to trust accounts. The Chair called upon the bill sponsor Rep. Tarleton to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Being that crossover is near the Chairman, with the sponsors consent; felt it was a good idea to wait on a companion bill for the Senate. The Bill is attached. (*Attachment 4*)

House Bill 1110–A BILL TO BE ENTITLED: an act to clarify procedures in civil actions for alienation of affection and criminal conversation. The Chair called upon the bill sponsor Rep. Goodwin to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Because of the nature of the bill and the abundance of questions Chairman Faison pulled the bill from the calendar and rescheduled it for the next committee meeting. The Bill is attached. (*Attachment 5*)

House Bill 1398–A BILL TO BE ENTITLED: an act to change the method for determining the senior resident superior court judge for a district. The Chair called upon the bill sponsor Rep. Goodwin to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 6*)

House Bill 937–A BILL TO BE ENTITLED: an act to provide that the North Carolina innocence commission may compel the testimony of a witness and the commission chair may grant limited immunity to the witness from prosecution for previous false statements made under oath in prior proceedings. The Chair called upon the bill sponsor Rep. Glazier to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Stevens was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 7*)

House Bill 1037-A BILL TO BE ENTITLED: an act to permit capital appellate and postconviction counsel reasonable access to their clients following decisions by the courts with respect to their clients' sentences. The Chair called upon the bill sponsor Rep. Glazier to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Allen was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 8*)

House Bill 1039–A BILL TO BE ENTITLED: an act to direct the administrative office of the courts to revise the "transcript of plea" form provided to a defendant who enters a plea of guilty or no contest to more clearly address the right of appeal limitations and shorter biological evidence preservation time frame that may apply as a result of the plea. The Chair called upon the bill sponsor Rep. Glazier to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Bryant was recognized to send forth an amendment. The amendment was adopted. Rep. Bryant was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, Amendment and Committee Report are attached. (*Attachment 9*)

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 5:31 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, April 22, 2009
20 Min. After Session
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	HB 587	Amend Cemetery Act/Eliminate Bond.	Representative Tarleton
2.	HB 1110	Clarify/Alien. of Affection/Crim. Conversat'n.	Representative Goodwin
3.	HB 1398	Determining Senior Resident Sup Ct Judge.	Representative Goodwin
4.	HB 937	Innocence Commn./Limited Witness Immunity.	Representative Glazier
5.	HB 1037	Permit Access to Capital Defendants.	Representative Glazier
6.	HB 1039	Guilty Plea Form Revisions.	Representative Glazier
7.	HB 787	Increase Penalty/Remove Serial # From Gun.	Representative Justice

4. **Adjourn**

VISITOR REGISTRATION SHEET

Name of Committee

22 Apr 09
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
A.C. Thiblen	Duke Energy
Patricia Ramon	NCACC
Lemuel Hinton	NCUC Staff
Daniel Long	"
Lucy Edmondson	Public Staff - NCUC
John Garrison	Public Staff NCUC
Angie Bailey	The e-NC Authority
CHARLES PITTMAN	e-NC AUTHORITY
Tom Coley	
Curtis Shew Jr	CWA
Rob Schofield	NC Policy Watch

VISITOR REGISTRATION SHEET

22 April 09

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jack Payden-Travers	2720 Poole Rd, Raleigh NC 27610
Tom Fuel	328 Burlage Cir. Chapel Hill. NC 27514
Stephen Dear	People of Faith Against the Death Penalty 110 W Main St., Ste 2G Carrboro NC 27510
Emilie Haertsch	"
Scott Bass	2720 Poole Rd. Raleigh
TYE Hunter	CDPL
Christopher Hill	ACLU Capital Punishment Project
Pam Guthrie	DMV-Traffic records
Julian Council	DMV-Traffic Records

HOUSE BILL 283

Short Title:	Clarify Broadband Internet Access Definition.	(Public)
Sponsors:	Representatives K. Alexander, Coates, Tillis, Faison (Primary Sponsors); Allred, Bryant, Gulley, Hughes, Johnson, and Lucas.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Public Utilities.	

February 25, 2009

A BILL TO BE ENTITLED

AN ACT CLARIFYING THE DEFINITION OF BROADBAND INTERNET ACCESS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-3(1) reads as rewritten:

"(1) 'Broadband service' means ~~any service that consists of or includes a high-speed access capability to transmit at a rate of not less than 200 kilobits per second in either the upstream or downstream direction and either (i) is used to provide access to the Internet, or (ii) provides computer processing, information storage, information content, or protocol conversion, including any service applications or information service provided over such high-speed access service. "Broadband service" does not include intrastate~~ a connection to the Internet that provides capacity for transmission at an average speed of at least 1.5 megabits per second downstream and at least 384 kilobits per second upstream, regardless of the technology or medium used to provide the connection. The term includes a connection to the Internet provided by wireless technology, copper wire, fiber-optic cable, coaxial cable, broadband over power lines, or other facilities or future technologies. The term does not include any of the following:

a. Value added services in which computer processing applications are used to act on the form, content, code, or protocol of any information transmitted.

b. Value added services providing text, graphic, video, or audio program content for a purpose other than transmission.

c. The transmission of video programming or other programming provided by (or generally considered comparable to programming provided by) a television broadcast station or a radio broadcast station, including cable TV, direct broadcast satellite, and digital television.

d. Interstate service that was tariffed by the Commission and in effect as of the effective date of this subdivision."

SECTION 2. G.S. 143B-437.45(4) reads as rewritten:

"(4) High-speed broadband Internet access. – Internet access with transmission speeds ~~that are consistent with requirements for high-speed broadband Internet access as defined by the Federal Communications Commission from time to time.~~ at an average speed of at least 1.5 megabits per second

downstream and at least 384 kilobits per second upstream, regardless of the technology or medium used to provide the connection. The term includes a connection to the Internet provided by wireless technology, copper wire, fiber-optic cable, coaxial cable, broadband over power lines, or other facilities or future technologies. The term does not include any of the following:

a. Value added services in which computer processing applications are used to act on the form, content, code, or protocol of any information transmitted.

b. Value added services providing text, graphic, video, or audio program content for a purpose other than transmission.

c. The transmission of video programming or other programming provided by (or generally considered comparable to programming provided by) a television broadcast station or a radio broadcast station, including cable TV, direct broadcast satellite, and digital television."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 587

Short Title:	Amend Cemetery Act/Eliminate Bond.	(Public)
Sponsors:	Representative Tarleton.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary II.	

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CEMETERY ACT BY ELIMINATING THE ABILITY TO POST A PERFORMANCE BOND IN LIEU OF DEPOSITS TO TRUST ACCOUNTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 65-66(g) reads as rewritten:

"(g) ~~In lieu of the deposits required under subsection (b) of this section, the cemetery company or other entity may post with the Commission a good and sufficient performance bond by surety company licensed to do business in North Carolina and in an amount sufficient to cover all payments made directly or indirectly by or on account of purchasers who have not received the purchased property and services.~~ Money received from the sale or assignment of notes entered into by the purchasers, or otherwise, shall be treated as payments made by the purchasers."

SECTION 2. G.S. 65-70(f) is repealed.

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

HOUSE BILL 1110

Short Title:	Clarify/Alien. of Affection/Crim. Conversat'n.	(Public)
Sponsors:	Representatives Goodwin; Harrison and Jackson.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary II.	

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY PROCEDURES IN CIVIL ACTIONS FOR ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 52 of the General Statutes is amended by adding the following new section to read:

"**§ 52-13. Procedures in causes of action for alienation of affection and criminal conversation.**

No act of the defendant shall give rise to a cause of action for alienation of affection or criminal conversation after the date of separation of the claimant and the claimant's spouse. An action for alienation of affection or criminal conversation shall not be commenced more than one year from the last act of the defendant giving rise to the cause of action. The date of separation shall be interpreted according to Chapter 50 of the General Statutes. A person may commence a cause of action for alienation of affection or criminal conversation against a natural person only."

SECTION 2. This act is effective when it becomes law and applies to actions commenced on or after that date.

HOUSE BILL 1398

Short Title:	Determining Senior Resident Sup Ct Judge.	(Public)
Sponsors:	Representatives Goodwin; and Lucas.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary I.	

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE METHOD FOR DETERMINING THE SENIOR RESIDENT SUPERIOR COURT JUDGE FOR A DISTRICT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-41.1(b) reads as rewritten:

"(b) There shall be one and only one senior resident superior court judge for each district or set of districts as defined in subsection (a) of this section, who shall be:

(1) Where there is only one regular resident superior court judge for the district, that judge; and

(2) Where there are two or more regular resident superior court judges for the district or set of districts, ~~the judge who, from among all the regular resident superior court judges of the district or set of districts, has the most continuous service as a regular resident superior court judge; provided if two or more judges are of equal seniority, the oldest of those judges shall be the senior regular resident superior court judge.~~the Chief Justice of the Supreme Court shall designate one of the judges as senior resident superior court judge to serve in that capacity at the pleasure of the Chief Justice."

SECTION 2. This act becomes effective October 1, 2009, but each senior resident superior court judge seated on that date in a multi-judge district shall continue to serve as senior resident superior court judge until that judge vacates the seat.

HOUSE BILL 1398:
Determining Senior Resident Sup Ct Judge

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	April 22, 2009
Introduced by:	Rep. Goodwin	**Prepared by:**	Tim Hovis Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1398 provides amends G.S.7A-41.1, District and set of districts defined; senior resident superior court judges and their authority, to amend subsection (b) of the statute to change the method for determining the senior resident superior court judge for a district.***

In a district or set of districts with two or more regular resident superior court judges for the district or set of districts, the bill authorizes the Chief Justice of the Supreme Court to designate one of the judges as senior resident superior court judge to serve in that capacity at the pleasure of the Chief Justice.

CURRENT LAW: Under the existing law, if there are two or more regular resident superior court judges for the district or set of districts, the judge who has the most continuous service as a regular resident superior court judge serves as the senior resident superior court judge. If there are two judges of equal seniority, the oldest of the judges shall be the senior regular resident superior court judge.

BACKGROUND: As provided in subsection (c) of the statute, senior resident superior court judges and regular resident superior court judges possess equal jurisdiction, power, authority and status except that Constitutional and statutory duties placed on the resident judge, including appointment of judges and removal from office, which are not related to a case, controversy or judicial proceeding are discharged by the senior resident superior court judge.

EFFECTIVE DATE: House Bill 1398 becomes effective October 1, 2009, but each senior resident superior court judge seated on that date in a multi-judge district shall continue to serve until the judge vacates the seat.

H1398-SMRG-14(e1) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1398 A BILL TO BE ENTITLED AN ACT TO CHANGE THE METHOD FOR DETERMINING THE SENIOR RESIDENT SUPERIOR COURT JUDGE FOR A DISTRICT.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 937

Short Title:	Innocence Commn./Limited Witness Immunity.	(Public)
Sponsors:	Representatives Glazier, Ross, Stam, Lucas (Primary Sponsors); and Harrison.	
Referred to:	Judiciary II, if favorable, Ways and Means/Broadband Connectivity.	

April 1, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE NORTH CAROLINA INNOCENCE COMMISSION MAY COMPEL THE TESTIMONY OF A WITNESS AND THE COMMISSION CHAIR MAY GRANT LIMITED IMMUNITY TO THE WITNESS FROM PROSECUTION FOR PREVIOUS FALSE STATEMENTS MADE UNDER OATH IN PRIOR PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1468 is amended by adding a new subsection to read:

"(a1) The Commission may compel the testimony of any witness. If a witness asserts his or her privilege against self-incrimination in a proceeding under this Article, the Commission chair, in the chair's judicial capacity, may order the witness to testify or produce other information if the chair first determines that the witness's testimony will likely be material to reach a correct factual determination in the case at hand. The order shall prevent a prosecutor from using the compelled testimony, or evidence derived therefrom, to prosecute the witness for previous false statements made under oath by the witness in prior proceedings. Once granted, the immunity shall apply throughout all proceedings conducted pursuant to this Article. The limited immunity granted under this section shall not prohibit prosecution of statements made under oath that are unrelated to the Commission's formal inquiry, false statements made under oath during proceedings under this Article, or prosecution for any other crimes."

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

HOUSE BILL 937:
Innocence Commn./Limited Witness Immunity

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	April 22, 2009
Introduced by:	Reps. Glazier, Ross, Stam, Lucas	**Prepared by:**	Tim Hovis*
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 937 would authorize the North Carolina Innocence Inquiry Commission (Commission) to compel the testimony of any witness and allow the Commission Chair to grant limited immunity to the witness from prosecution for previous false statements made under oath in prior proceedings.***

BACKGROUND: In 2006, the General Assembly established the North Carolina Innocence Inquiry Commission, an eight-member body appointed by the Chief Justice of the North Carolina Supreme Court and the Chief Judge of the North Carolina Court of Appeals. The Commission is charged with the responsibility of hearing claims of factual innocence by persons convicted of felonies. If the person pled not guilty to the felony charge, at least five members of the Commission must conclude that there is sufficient evidence to merit judicial review. Upon a majority of five Commission members concluding that review is warranted, the Chief Justice appoints a panel of three Superior Court judges to hold an evidentiary hearing. If the person pled guilty to the felony charge, then the Commission must be unanimous in finding that the claim merits judicial review in order for the panel of judges to be appointed. The judicial panel must unanimously rule that the innocence of the defendant has been proven by clear and convincing evidence for the charges to be dismissed. Decisions of the Commission and the judicial panel cannot be appealed.

CURRENT LAW: Under the process governing the Commission, a formal inquiry into a claim of innocence cannot be made unless the defendant gives a signed statement waiving procedural safeguards and privileges and agrees to cooperate with the Commission. The Commission can use any measures provided for in the Criminal Procedure statutes and the Rules of Civil Procedure to obtain information necessary to its inquiry including compelling the attendance of witnesses and the production of evidence. All State discovery and disclosure laws are enforceable as if the convicted person were currently being tried for the charge for which the convicted person is claiming innocence.

BILL ANALYSIS: House Bill 937 would authorize the Commission to compel the testimony of any witness to aid in determining whether there is sufficient evidence of factual innocence to merit judicial review. If a witness asserts the privilege against self-incrimination, the Chair of the Commission may order the witness to still testify if the Chair determines that the testimony will likely be material to reach a correct factual determination in the case at hand.

The Chair's order compelling the testimony would prevent a prosecutor from using the compelled testimony or any evidence derived from it to prosecute the witness for previous false statements made under oath by the witness in prior proceedings. This immunity applies to all proceedings conducted under the Commission. However, the immunity that is granted does not prohibit prosecution of statements made under oath that are unrelated to the Commission's inquiry, false statements made under oath during the proceedings under the Commission, or prosecution for other crimes.

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

*This summary was substantially contributed to by Ms. Drupti Chauhan, Staff Attorney

H937-SMRG-16(e1) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 937 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE NORTH CAROLINA INNOCENCE COMMISSION MAY COMPEL THE TESTIMONY OF A WITNESS AND THE COMMISSION CHAIR MAY GRANT LIMITED IMMUNITY TO THE WITNESS FROM PROSECUTION FOR PREVIOUS FALSE STATEMENTS MADE UNDER OATH IN PRIOR PROCEEDINGS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 1037

Short Title:	Permit Access to Capital Defendants.	(Public)
Sponsors:	Representatives Glazier, Ross, Blue, Harrison (Primary Sponsors); E. Floyd, Jackson, Lucas, Mackey, and Parmon.	
Referred to:	Judiciary II, if favorable, Ways and Means/Broadband Connectivity.	

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO PERMIT CAPITAL APPELLATE AND POSTCONVICTION COUNSEL REASONABLE ACCESS TO THEIR CLIENTS FOLLOWING DECISIONS BY THE COURTS WITH RESPECT TO THEIR CLIENTS' SENTENCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-451 is amended by adding a new subsection to read:

"(e1) When the Supreme Court of North Carolina files an opinion affirming or reversing the judgment of the trial court in a case in which the defendant was sentenced to death, or files an opinion or decision with regard to such a defendant's postconviction petition for relief from a sentence of death, or when any federal court files or issues an opinion or decision in such circumstances, the Department of Correction shall, on the day the opinion or decision is filed or issued, permit counsel for the defendant to visit the defendant at the institution at which the defendant is confined. The visit shall be permitted during regular business hours for not less than one hour, unless a visit outside regular business hours is agreed to by both the institution's administrator and counsel for the defendant. This section shall not be construed to abridge the adequate and reasonable opportunity for attorneys to consult with clients sentenced to death generally and shall not be construed to mandate an attorney visit during an emergency at the institution at which a defendant is confined."

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

HOUSE BILL 1037:
Permit Access to Capital Defendants

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	April 22, 2009
Introduced by:	Reps. Glazier, Ross, Blue, Harrison	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1037 permits capital appellate and postconviction counsel reasonable access to their clients following decisions by the courts with respect to their clients' sentences.

BILL ANALYSIS:

House Bill 1037 amends G.S. 7A-451 by adding a new subsection (e1) which would require the Department of Correction to allow counsel for a defendant sentenced to death to visit the defendant, at the institution at which the defendant is confined, on the day an opinion or decision is issued related to the defendant's case.

The visit shall be permitted during business hours for not less than one hour, unless a visit outside business hours is agreed to by both the institution's administrator and counsel for the defendant.

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1037 A BILL TO BE ENTITLED AN ACT TO PERMIT CAPITAL APPELLATE AND POSTCONVICTION COUNSEL REASONABLE ACCESS TO THEIR CLIENTS FOLLOWING DECISIONS BY THE COURTS WITH RESPECT TO THEIR CLIENTS' SENTENCES.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1039

Short Title:	Guilty Plea Form Revisions.	(Public)
Sponsors:	Representatives Glazier, Ross (Primary Sponsors); E. Floyd, Harrison, and Lucas.	
Referred to:	Judiciary II, if favorable, Ways and Means/Broadband Connectivity.	

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO REVISE THE "TRANSCRIPT OF PLEA" FORM PROVIDED TO A DEFENDANT WHO ENTERS A PLEA OF GUILTY OR NO CONTEST TO MORE CLEARLY ADDRESS THE RIGHT OF APPEAL LIMITATIONS AND SHORTER BIOLOGICAL EVIDENCE PRESERVATION TIME FRAME THAT MAY APPLY AS A RESULT OF THE PLEA.

The General Assembly of North Carolina enacts:

SECTION 1. The Administrative Office of the Courts shall revise the "Transcript of Plea" form that is provided to a defendant who enters a plea of guilty or no contest to a criminal offense so that the form more clearly informs the defendant that G.S. 15A-1444 imposes limitations on the right of appeal when a defendant pleads guilty or no contest to a criminal offense with which the defendant is charged, and that also assists a judge in determining whether the defendant's plea is a product of informed choice as required by G.S. 15A-1022(b). In revising the form, the Administrative Office of the Courts shall insert to the list of items that currently appear on the form a new item that reads as follows: "Do you understand that following a plea of guilty or no contest there are limitations on your right to appeal and has your lawyer explained these limitations to you?"

SECTION 2. The Administrative Office of the Courts shall revise the "Transcript of Plea" form that is provided to a defendant who decides to enter a plea of guilty to a criminal offense so that the form more clearly informs the defendant that under G.S. 15A-268 there may be a shorter preservation period for biological evidence when a defendant pleads guilty to a criminal offense than if the defendant had been tried and convicted by a jury for the same offense, and that also assists a judge in determining whether a defendant's plea is a product of informed choice as required by G.S. 15A-1022(b). In revising the form the Administrative Office of the Courts shall insert to the list of items that currently appear on the form a new item that reads as follows: "Do you understand that your plea of guilty may impact how long biological evidence related to your case (for example, blood, hair, skin tissue) will be preserved and has your lawyer explained these limitations to you?"

SECTION 3. The Administrative Office of the Courts shall revise the form pursuant to this act by September 1, 2009, and the revised form shall be made available for pleas of guilty or no contest that are entered on or after October 1, 2009.

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

HOUSE BILL 1039:
Guilty Plea Form Revisions

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	April 22, 2009
Introduced by:	Reps. Glazier, Ross	**Prepared by:**	Tim Hovis* Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1039 would direct the Administrative Office of the Courts (AOC) to revise the "Transcript of Plea" form (Form) provided to a defendant who enters a plea of not guilty or no contest to clearly state the limitations on the right of appeal and the shorter biological evidence preservation time frame that may apply as a result of the plea.***

CURRENT LAW: G.S. 15A-1022 states that, except in limited situations, a superior court judge may not accept a plea of guilty or no contest from a defendant without first personally addressing the defendant and informing him or her of various rights including the right to plead not guilty and determining that the plea is a product of informed choice. The statute does not provide that the court must inform the defendant on the limitations of appeal or the preservation of biological evidence.

G.S. 15A-1444 allows a defendant who has entered a plea of guilty or no contest to a felony to appeal as a matter of right on the issue of whether the sentence is supported by evidence introduced at the trial and sentencing hearing only if the minimum sentence of imprisonment does not fall within the presumptive range for the defendant's prior record or conviction level and class of offense. A defendant who enters a plea of guilty or no contest to a felony or misdemeanor in superior court can appeal as matter of right the issue of whether the sentence imposed: (i) resulted from a incorrect finding of the prior record level or prior conviction level; (ii) contains a sentence disposition not authorized for the class of offense or prior record or conviction level; or (iii) contains a term of imprisonment for a duration not authorized for the class of offense and prior record or conviction level. In any other case, the defendant may file an appeal for review by writ of certiorari.

G.S. 15A-268 provides that for convictions resulting in the death penalty, biological evidence must be preserved until the execution. For offenses that require sex offender registration, the biological evidence must be preserved for the period of incarceration and period of mandatory supervised release or probation. For convictions of violent felonies, biological evidence must be preserved for the period of incarceration but if the defendant was convicted on a plea of guilty, the evidence must be preserved for 3 years from the date of conviction. For any other felonies not covered for which the defendant's genetic profile may be included in the State DNA database, the biological evidence must be preserved for 7 yeas from conviction but if the defendant was convicted on a plea of guilty, the biological evidence must be preserved for 3 years form the date of the conviction.

BILL ANALYSIS:

Section 1: House Bill 1039 would direct the AOC to revise the Form to clearly state that G.S. 15A-1444 imposes limitations on the right of appeal when a defendant pleads guilty or no contest to a criminal offense with which the defendant is charged. The AOC must insert a new item that reads:

- "Do you understand that the following a plea of guilty or no contest, there are limitations on your right to appeal and has your lawyer explained these limitations to you?"

Section 2: House Bill 1039 would direct the AOC to revise the Form to clearly state that under G.S. 15A-268, there may be shorter preservation period for biological evidence when a defendant pleads

guilty to a criminal offense than if the defendant had been tried and convicted by a jury for the same offense. The AOC must insert a new item that reads:

- "Do you understand that your plea of guilty may impact how long biological evidence related to your case (for example, blood, hair, skin tissue) will be preserved and has your lawyer explained these limitations to you?"

EFFECTIVE DATE: The AOC must revise the Form by September 1, 2009 and the revised from must be made available for pleas of guilty or no contest that are entered on or after October 1, 2009. The bill would become effective when it becomes law.

**This summary was substantially contributed to by Ms. Drupti Chauhan, Staff Attorney, Research Division*

H1039-SMRG-15(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1st

H. B. No. 1039 DATE 4/22/09

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

COMMITTEE SUBSTITUTE _____

(Rep.) Bryant
Sen.)

moves to amend the bill on page 1, line 17

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"appeal?'";

and on page 1, lines 27-28

by rewriting the lines to read:

"biological evidence related to your case (for example, blood, hair, skin tissue) will be preserved?'";

SIGNED Angela R Bryant

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1039 A BILL TO BE ENTITLED AN ACT TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO REVISE THE "TRANSCRIPT OF PLEA" FORM PROVIDED TO A DEFENDANT WHO ENTERS A PLEA OF GUILTY OR NO CONTEST TO MORE CLEARLY ADDRESS THE RIGHT OF APPEAL LIMITATIONS AND SHORTER BIOLOGICAL EVIDENCE PRESERVATION TIME FRAME THAT MAY APPLY AS A RESULT OF THE PLEA.

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

(FOR JOURNAL USE ONLY)

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

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

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

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1039
PROPOSED COMMITTEE SUBSTITUTE H1039-PCS10886-RG-10

Short Title: Guilty Plea Form Revisions. (Public)

Sponsors:

Referred to:

April 6, 2009

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO REVISE THE "TRANSCRIPT OF PLEA" FORM PROVIDED TO A DEFENDANT WHO ENTERS A PLEA OF GUILTY OR NO CONTEST TO MORE CLEARLY ADDRESS THE RIGHT OF APPEAL LIMITATIONS AND SHORTER BIOLOGICAL EVIDENCE PRESERVATION TIME FRAME THAT MAY APPLY AS A RESULT OF THE PLEA.

The General Assembly of North Carolina enacts:

SECTION 1. The Administrative Office of the Courts shall revise the "Transcript of Plea" form that is provided to a defendant who enters a plea of guilty or no contest to a criminal offense so that the form more clearly informs the defendant that G.S. 15A-1444 imposes limitations on the right of appeal when a defendant pleads guilty or no contest to a criminal offense with which the defendant is charged, and that also assists a judge in determining whether the defendant's plea is a product of informed choice as required by G.S. 15A-1022(b). In revising the form, the Administrative Office of the Courts shall insert to the list of items that currently appear on the form a new item that reads as follows: "Do you understand that following a plea of guilty or no contest there are limitations on your right to appeal?".

SECTION 2. The Administrative Office of the Courts shall revise the "Transcript of Plea" form that is provided to a defendant who decides to enter a plea of guilty to a criminal offense so that the form more clearly informs the defendant that under G.S. 15A-268 there may be a shorter preservation period for biological evidence when a defendant pleads guilty to a criminal offense than if the defendant had been tried and convicted by a jury for the same offense, and that also assists a judge in determining whether a defendant's plea is a product of informed choice as required by G.S. 15A-1022(b). In revising the form, the Administrative Office of the Courts shall insert to the list of items that currently appear on the form a new item that reads as follows: "Do you understand that your plea of guilty may impact how long biological evidence related to your case (for example, blood, hair, skin tissue) will be preserved?".

SECTION 3. The Administrative Office of the Courts shall revise the form pursuant to this act by September 1, 2009, and the revised form shall be made available for pleas of guilty or no contest that are entered on or after October 1, 2009.

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

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, April 29, 2009

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, April 29, 2009, in Room 415 of the Legislative Office Building 10 mins. after Session at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Lucy Allen, Angela Bryant, Jim Gulley, Dewey Hill, Mark Hilton, Sarah Stevens and Winkie Wilkins. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Seitz. House Sergeant-at-Arms assisting: Toussaint Avent and Martha Parrish. House Pages: Colby White from Stokes County sponsored by Representative Holloway and Michelle Mann from Alamance County sponsored by Representative Allred. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. Chairman Faison opened by explaining that House Bill 784 was pending on a Federal level, so that bill was pulled until further notice. The following bills were placed before the Committee:

House Bill 1198–A BILL TO BE ENTITLED: an act to clarify that persons who had a three-year waiting period for a hearing on conditional restoration of a revoked license when the law was changed to a five-year waiting period were not affected by the change. The Chair called upon the bill sponsor Rep. Avila to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. The committee did not have enough information to vote the bill favorable or unfavorable, so the Chair asked the rep. Avila come back next week with more information to have her bill voted on one way or the other. The Bill is attached. (*Attachment 3*)

House Bill 787–A BILL TO BE ENTITLED: an act to increase the criminal penalty for altering, destroying, or removing the permanent serial number of a firearm. Rep. Wilkins moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Justice to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Hilton was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 4*)

House Bill 1110–A BILL TO BE ENTITLED: an act to clarify procedures in civil actions for alienation of affection and criminal conversation. Rep. Allen moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Goodwin to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Allen was recognized to send forth an amendment. The amendment was adopted. Rep. Bryant was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, Amendment, Proposed Committee Substitute and Committee Report are attached. (*Attachment 5*)

House Bill 1332–A BILL TO BE ENTITLED: an act to create the offense of felonious affray with the use of a deadly weapon resulting in death or serious bodily injury. The Chair called upon the bill sponsor Rep. Stiller to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Coates was recognized to send forth an amendment. The amendment was adopted. Rep. Alexander was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, Amendment and Committee Report are attached. (*Attachment 6*)

House Bill 1334–A BILL TO BE ENTITLED: an act to create the criminal offense of home invasion. The Chair called upon the bill sponsor Rep. Stiller to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Hill was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 7*)

House Bill 1303–A BILL TO BE ENTITLED: an act to make felonious certain false reports to law enforcement agencies. The Chair called upon the bill sponsor Rep. Blust to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. After many questions being raised Chairman Faison felt the bill was bordering the line of constitutional rights and decided to place the bill in a sub committee. Chairman appointed Representative Bryant as Chair, as well as Rep. Haire and Stevens to serve on that committee. Bill is attached. (*Attachment 8*)

House Bill 421–A BILL TO BE ENTITLED: an act to require district attorneys to release investigation results to local law enforcement internal affairs or its equivalent, the decedents next of kin, and the press, and to expand the list of tactical weapons that, when used by a law enforcement officer with sufficient force, cause death. Rep. Coates moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Alexander to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 9*)

With no further time left for business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 4:32 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, April 29, 2009
10 Mins. After Session
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	HB 421	Use of Deadly Force/SBI Investigations.	Representative Alexander
2.	HB 1390	Wills/Bequests to Drafting Attorney.	Representative Mackey
3.	HB 1110	Clarify/Alien. of Affection/Crim. Conversat'n.	Representative Goodwin
4.	HB 1198	Clarification/Hearing on License Restoration.	Representative Avila
5.	HB 1256	Larceny of a Motor Vehicle Part.	Representative Holloway
6.	HB 784	Execution/Physician Assistance Authorized.	Representative Moore
7.	HB 1303	False Report To Law Enforcement.	Representative Blust
8.	HB 1332	Create Criminal Offense of Felony Affray.	Representative Stiller
9.	HB 1334	Create Criminal Offense/Home Invasion.	Representative Stiller
10.	HB 787	Increase Penalty/Remove Serial # From Gun.	Representative Justice
11.	HB 1456	Drug Felon/No Large Dogs.	Representative Burr

4. **Adjourn**

VISITOR REGISTRATION SHEET

Waystmeans — 4/29/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Norlan Graves	Rep. Hall
Sarah Preston	ACLU-NC
Amanda Arrington	HHS
Seth Dearmin	DOJ
Sgt. D.L. Wells	Pender Co. Sheriff's Office.
Curtis Brooks	DOJ/DMV
Debbie Jones	DMV
Charlotte Boyd	DMV
Carlos E. Sanchez	AT&T
Sammy Roberson	TWC
Rev. Mark Creech	CAL

VISITOR REGISTRATION SHEET

Ways + Means — 4/29/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Scott Kirby	NCMB
Carole Woodward	NCTIA
Herb Creekmann	AT&T
Mark Jernigan	AT&T
A.A. Adams	Self
Marvin Waters	CCOS
Boyd Cauble	City of Charlotte
Rory Williams	@ NC
Jack Cogdell	Womble
Thomas Morris	Edwards & Wells
Thom Mansfield	NC Medical Board

VISITOR REGISTRATION SHEET

Ways & Means — 4/29/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Angela M. Grimes	Delta Sigma Theta Sorority
Kristi Tally	
Virginia Tally	
Bernice L. Perry	
Octavia Boing	
Tom Bennett	NCVAN
Bob Wells	Alliance of N.C. Independent Telco's
Jere Royall	NC Family Policy Council
Alicia [illegible]	MWC
Daniel Bach	K&L Gates
Rob Schofield	NC Policy Watch
Kim Crowd	NCBA
Charles Montgomery	NCBA
Scott Montgomery	NCBA

HOUSE BILL 1198

Short Title:	Clarification/Hearing on License Restoration.	(Public)
Sponsors:	Representatives Avila, Glazier (Primary Sponsors); Cleveland, Dollar, Frye, Hilton, Killian, Lucas, Samuelson, Stam, Stiller, and Sutton.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary III.	

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT PERSONS WHO HAD A THREE-YEAR WAITING PERIOD FOR A HEARING ON CONDITIONAL RESTORATION OF A REVOKED LICENSE WHEN THE LAW WAS CHANGED TO A FIVE-YEAR WAITING PERIOD WERE NOT AFFECTED BY THE CHANGE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 33 of S.L. 2007-493 reads as rewritten:

"**SECTION 33.** Sections 26, 27, 28, 29, 30, and 31 of this act become effective December 1, 2007, and apply to offenses committed on or after that date. Section 14 of this act applies to persons whose waiting period for a hearing on conditional restoration commences on or after the effective date of this act. The remainder of 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."

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

HOUSE BILL 787

Short Title:	Increase Penalty/Remove Serial # From Gun.	(Public)
Sponsors:	Representatives Justice, Burr, Gibson, R. Warren (Primary Sponsors); Barnhart, Blackwood, Brown, Grady, Harrison, Justus, Killian, Langdon, Lewis, Samuelson, Spear, Starnes, Steen, Stiller, Tillis, Weiss, and Wiley.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary II.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR ALTERING, DESTROYING, OR REMOVING THE PERMANENT SERIAL NUMBER OF A FIREARM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-160.1 reads as rewritten:

"**§ 14-160.1. Alteration, destruction or removal of permanent identification marks from personal property.**

(a) It shall be unlawful for any person to alter, deface, destroy or remove the permanent serial number, manufacturer's identification plate or other permanent, distinguishing number or identification mark from any item of personal property with the intent thereby to conceal or misrepresent the identity of said item.

(b) It shall be unlawful for any person knowingly to sell, buy or be in possession of any item of personal property, not his own, on which the permanent serial number, manufacturer's identification plate or other permanent, distinguishing number or identification mark has been altered, defaced, destroyed or removed for the purpose of concealing or misrepresenting the identity of said item.

(c) ~~A~~ Except as provided by subsection (c1) of this section, a violation of any of the provisions of this section shall be a Class 1 misdemeanor.

(c1) If a person commits an offense under subsection (a) of this section and the item of personal property is a firearm, then the violation shall be a Class H felony.

(d) This section shall not in any way affect the provisions of G.S. 20-108, 20-109(a) or 20-109(b)."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

HOUSE BILL 787:
Increase Penalty/Remove Serial # From Gun

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary II	**Date:**	April 22, 2009
Introduced by:	Reps. Justice, Burr, Gibson, R. Warren	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H787-CSSA-16		

SUMMARY: ***The Proposed Committee Substitute for House Bill 787 increases the criminal penalty for altering, destroying, or removing the permanent serial number of a firearm and for possessing a firearm with the serial number removed.***

CURRENT LAW: G.S. 14-160.1 creates a Class 1 misdemeanor for removing a serial number from any personal property or for possession of personal property where the serial number has been removed. Under current law, a firearm would be personal property.

BILL ANALYSIS:

Section 1 amends G.S. 14-160.1(c) to clarify that the misdemeanor offense does not apply if there is another offense that covers the conduct and provides greater punishment.

Section 2 creates a new G.S. 14-160.2 which creates a Class H felony for:

- Altering defacing destroying or removing the permanent serial number, manufacturer's identification plate or other permanent, distinguishing number or identification mark from any firearm with the intent thereby to conceal or misrepresent the identity of the firearm.
- Knowingly selling, buying or possessing any firearm on which the permanent serial number, manufacturer's identification plate or other permanent, distinguishing number or identification mark has been altered, defaced, destroyed or removed for the purpose of concealing or misrepresenting the identity of the firearm.

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

BACKGROUND:

§ 14-160.1. Alteration, destruction or removal of permanent identification marks from personal property.

(a) It shall be unlawful for any person to alter, deface, destroy or remove the permanent serial number, manufacturer's identification plate or other permanent, distinguishing number or identification mark from any item of personal property with the intent thereby to conceal or misrepresent the identity of said item.

(b) It shall be unlawful for any person knowingly to sell, buy or be in possession of any item of personal property, not his own, on which the permanent serial number, manufacturer's identification plate or other permanent, distinguishing number or identification mark has been

altered, defaced, destroyed or removed for the purpose of concealing or misrepresenting the identity of said item.

(c) A violation of any of the provisions of this section shall be a Class 1 misdemeanor.

(d) This section shall not in any way affect the provisions of G.S. 20-108, 20-109(a) or 20-109(b). (1977, c. 767, s. 1; 1993, c. 539, s. 106; 1994, Ex. Sess., c. 24, s. 14(c).)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 787
PROPOSED COMMITTEE SUBSTITUTE H787-CSSA-16 [v.2]

4/22/2009 10:25:47 AM

Short Title: Increase Penalty/Remove Serial # From Gun. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR ALTERING, DESTROYING, OR REMOVING THE PERMANENT SERIAL NUMBER OF A FIREARM AND FOR POSSESSING A FIREARM WITH THE SERIAL NUMBER REMOVED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-160.1(c) reads as rewritten:

"(c) Unless the conduct is covered under some other provision of law providing greater punishment, ~~A~~ a violation of any of the provisions of this section shall be a Class 1 misdemeanor."

SECTION 2. Article 23 of Chapter 14 of the General Statutes is amended by adding a new section to read:

""**§ 14-160.2. Alteration, destruction or removal of serial number from firearm; possession of firearm with serial number removed.**

(a) It shall be unlawful for any person to alter, deface, destroy or remove the permanent serial number, manufacturer's identification plate or other permanent, distinguishing number or identification mark from any firearm with the intent thereby to conceal or misrepresent the identity of the firearm.

(b) It shall be unlawful for any person knowingly to sell, buy, or be in possession of any firearm, on which the permanent serial number, manufacturer's identification plate or other permanent, distinguishing number or identification mark has been altered, defaced, destroyed or removed for the purpose of concealing or misrepresenting the identity of the firearm.

(c) A violation of any of the provisions of this section shall be a Class H felony.

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 787 A BILL TO BE ENTITLED AN ACT TO INCREASE THE CRIMINAL PENALTY FOR ALTERING, DESTROYING, OR REMOVING THE PERMANENT SERIAL NUMBER OF A FIREARM.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

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

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

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1110

Short Title:	Clarify/Alien. of Affection/Crim. Conversat'n.	(Public)
Sponsors:	Representatives Goodwin; Harrison and Jackson.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary II.	

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY PROCEDURES IN CIVIL ACTIONS FOR ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 52 of the General Statutes is amended by adding the following new section to read:

"**§ 52-13. Procedures in causes of action for alienation of affection and criminal conversation.**

No act of the defendant shall give rise to a cause of action for alienation of affection or criminal conversation after the date of separation of the claimant and the claimant's spouse. An action for alienation of affection or criminal conversation shall not be commenced more than one year from the last act of the defendant giving rise to the cause of action. The date of separation shall be interpreted according to Chapter 50 of the General Statutes. A person may commence a cause of action for alienation of affection or criminal conversation against a natural person only."

SECTION 2. This act is effective when it becomes law and applies to actions commenced on or after that date.

HOUSE BILL 1110:
Clarify/Alien. of Affection/Crim. Conversat'n

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary II	**Date:**	April 28, 2009
Introduced by:	Rep. Goodwin	**Prepared by:**	Tim Hovis Committee Counsel
Analysis of:	PCS to First Edition H1110-CSRG-12		

SUMMARY: ***The Proposed Committee Substitute for House Bill 1110 adds a new section to Chapter 52 of the General Statutes, Powers and Liabilities of Married Persons, to provide that the torts of alienation of affection and criminal conversation cannot arise from acts of a person that occur more than 60 days after the date of separation of the claimant and the claimant's spouse. The bill goes on to provide that an action for either tort shall not be commenced more than two years from the last act of the defendant giving rise to the cause of action and to allow such actions against natural persons only.***

CURRENT LAW: North Carolina is currently one of a few states that still permits the torts of alienation of affection and criminal conversation.

The tort of alienation of affection may be brought against a third party whose conduct "alienates" or deprives a spouse of the affection that previously existed between the spouses. Evidence of adultery or sexual intercourse is not required.

For recovery from a defendant under the tort of criminal conversation, a spouse must show that adultery or sexual intercourse occurred between his or her spouse and a third party.

The statue of limitations for both torts is three years from the last act of the defendant third party giving rise to the cause of action.

BACKGROUND: In *Johnson v. Pearce*, 148 N.C. App. 199 (2001), the North Carolina Court of Appeals held that the tort of criminal conversation could be based solely on post-separation conduct.

EFFECTIVE DATE: The Proposed Committee Substitute for House Bill 1110 is effective when it becomes law and applies to actions commenced on or after that date.

H1110-SMRG-24(CSRG-12) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1110 DATE 4/29/09

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

COMMITTEE SUBSTITUTE X

Rep.)
) Allen
Sen.)

1 moves to amend the bill on page 1, line 12
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the word "two" and substituting
4 the word "three".
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SIGNED Lucy T. Allen

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1110
PROPOSED COMMITTEE SUBSTITUTE H1110-CSRG-12 [v.1]

4/28/2009 7:35:01 PM

Short Title: Clarify/Alien. of Affection/Crim. Conversat'n. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY PROCEDURES IN CIVIL ACTIONS FOR ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 52 of the General Statutes is amended by adding the following new section to read:

"**§ 52-13. Procedures in causes of action for alienation of affection and criminal conversation.**

No act of the defendant shall give rise to a cause of action for alienation of affection or criminal conversation that occurs more than 60 days after the date of separation of the claimant and the claimant's spouse. An action for alienation of affection or criminal conversation shall not be commenced more than two years from the last act of the defendant giving rise to the cause of action. The date of separation shall be interpreted according to Chapter 50 of the General Statutes. A person may commence a cause of action for alienation of affection or criminal conversation against a natural person only."

SECTION 2. This act is effective when it becomes law and applies to actions commenced on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1110 A BILL TO BE ENTITLED AN ACT TO CLARIFY PROCEDURES IN CIVIL ACTIONS FOR ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

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

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

HOUSE BILL 1332

Short Title:	Create Criminal Offense of Felony Affray.	(Public)
Sponsors:	Representatives Stiller, Barnhart (Primary Sponsors); Allred, Blackwood, Cleveland, Cole, Gulley, Hilton, Holloway, Howard, McElraft, Starnes, Steen, Tillis, and West.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary III.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE OFFENSE OF FELONIOUS AFFRAY WITH THE USE OF A DEADLY WEAPON RESULTING IN DEATH OR SERIOUS BODILY INJURY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-34.10. Felonious affray with the use of a deadly weapon resulting in death or serious bodily injury.**

(a) A person who engages in an affray in which a deadly weapon is used, resulting in the death of another, shall be guilty of a Class C felony.

(b) A person who engages in an affray in which a deadly weapon is used, resulting in the serious bodily injury of another, shall be guilty of a Class E felony."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

HOUSE BILL 1332:
Create Criminal Offense of Felony Affray

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	April 28, 2009
Introduced by:	Reps. Stiller, Barnhart	**Prepared by:**	Tim Hovis Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1332 would add a new statute, G.S. 14-34.10, Felonious affray with the use of a deadly weapon resulting in death or serious bodily injury, to provide that a person who engages in an affray in which a deadly weapon is used, is guilty of the following:***

- ***If the affray results in the death of another, a Class C felony.***
- ***If the affray results in the serious bodily injury of another, a Class E felony.***

Assuming no prior record, the presumptive minimum sentence for a Class C felony is 58-73 months, active punishment. For a Class E felony, the presumptive minimum sentence is 20-25 months, intermediate/active punishment.

CURRENT LAW: G.S. 14-33 provides that a person who commits a simple assault or a simple assault and battery or participates in a simple affray is guilty of a Class 2 misdemeanor.

G.S. 14-34.6 provides that a person is guilty of a Class A1 misdemeanor if the person commits an assault or an affray on an emergency medical technician, a medical responder, an emergency department nurse, and emergency department physician, or a firefighter.

EFFECTIVE DATE: House Bill 1332 becomes effective December 1, 2009 and applies to offenses committed on or after that date.

BACKGROUND: *Black's Legal Dictionary* defines an affray as "the fighting of two or more persons in some public place to the disturbance of the people, e.g. where two or more persons voluntarily or by agreement engage in any fight, or use any blows or violence towards each other in an angry or quarrelsome manner, in any public place to the disturbance of others."

H1332-SMRG-21(e1) v3

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1st

H. B. No. 1332 DATE 4/29/09

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

COMMITTEE SUBSTITUTE _____

Rep.) Coates
Sen.)

moves to amend the bill on page 1, lines 9-12

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"'(a) A person who uses a deadly weapon resulting in the death of another, while engaged in an affray, shall be guilty of a Class C felony.

(b) A person who uses a deadly weapon resulting in the serious bodily injury of another, while engaged in an affray shall be guilty of a Class E felony.'"

SIGNED Lorene Coates

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1334

Short Title:	Create Criminal Offense/Home Invasion.	(Public)
Sponsors:	Representatives Stiller, Steen, Barnhart (Primary Sponsors); Allred, Blackwood, Blust, Brown, Cleveland, Cole, Faison, Frye, Gulley, Hilton, Holloway, Howard, Johnson, Justus, McElraft, Moore, Neumann, Starnes, Tillis, and West.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary III.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF HOME INVASION.

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:

"**§ 14-52.1. First- and second-degree home invasion.**

(a) Any person possessing a firearm who by force and with violence breaks or enters the occupied dwelling house of another or an occupied sleeping apartment in any building at night with intent to commit any felony or larceny therein is guilty of home invasion in the first degree and shall be punished as a Class C felon.

(b) Any person possessing a firearm who by force and with violence breaks or enters the occupied dwelling house of another or an occupied sleeping apartment in any building with intent to commit any felony or larceny therein shall be guilty of home invasion in the second degree and punished as a Class D felon."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

HOUSE BILL 1334:
Create Criminal Offense/Home Invasion

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	April 29, 2009
Introduced by:	Reps. Stiller, Steen, Barnhart	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1334 would create the criminal offenses of first and second degree home invasion.***

CURRENT LAW:

Burglary

G.S. 14-51 and G.S. 14-52 define the offenses of first and second degree burglary and prescribe the punishment for those offenses. A person is guilty of burglary if he or she breaks and enters without consent the dwelling house or sleeping apartment of another at night with the intent to commit any felony or larceny.

First degree burglary:

- Any person is in the actual occupation of any part of the house or sleeping apartment at the time
- Punishable as Class D felony

Second degree burglary:

- not actually occupied by anyone at the time of the commission of the crime
- Punishable as Class G felony

Breaking or Entering

Under G.S. 14-54, breaking or entering of a building with intent to commit any felony or larceny is a Class H felony.

BILL ANALYSIS: House Bill 1334 would create the offenses of first and second degree home invasion. The offense of first degree home invasion would make it a Class C felony for a person with a firearm to "by force and with violence" break and enter into an occupied dwelling or sleeping apartment at night with intent to commit a felony or larceny. If committed other than at night, the offense would be second degree home invasion, punishable as a Class D felony.

EFFECTIVE DATE: The bill would become effective December 1, 2009 and apply to offenses committed on or after that date.

H1334-SMRV-54(e1) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for
HB 1334 A BILL TO BE ENTITLED AN ACT TO CREATE THE CRIMINAL OFFENSE OF HOME INVASION.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1303

Short Title:	False Report to Law Enforcement.	(Public)
Sponsors:	Representatives Blust; and Starnes.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary I.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE FELONIOUS CERTAIN FALSE REPORTS TO LAW ENFORCEMENT AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-225 reads as rewritten:

"**§ 14-225. False reports to law enforcement agencies or officers.**

(a) For purposes of this section, the term "official inquiry" means the pursuit of an investigative matter by a sworn agent of the State Bureau of Investigation pursuant to a statutorily authorized request from the Governor or the Attorney General, assistance rendered in accordance with G.S. 114-14, or an investigation being conducted as a matter of original jurisdiction conferred upon the State Bureau of Investigation by North Carolina law.

(b) Any person who shall willfully make or cause to be made to a law enforcement agency or officer any false, misleading or unfounded report, for the purpose of interfering with the operation of a law enforcement agency, or to hinder or obstruct any law enforcement officer in the performance of his duty, shall be guilty of a Class 2 misdemeanor.

(c) In response to an official inquiry by a sworn agent of the State Bureau of Investigation who is investigating a Class A, B, C, D, E, F, or G felony, any person who shall willfully do any of the following is guilty of a Class H felony:

(1) Falsify or conceal by any trick, scheme, or device a material fact.

(2) Make any materially false, fictitious, or fraudulent statement or representation.

(3) Use any false writing or document knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry."

SECTION 2. Section 1 of this act becomes effective December 1, 2009, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 421

Short Title:	Use of Deadly Force/SBI Investigations.	(Public)
Sponsors:	Representatives K. Alexander; Adams, Blue, Bryant, Cotham, Faison, E. Floyd, Hall, Hughes, Jones, Mackey, Pierce, and Womble.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary III.	

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE DISTRICT ATTORNEYS TO RELEASE INVESTIGATION RESULTS TO LOCAL LAW ENFORCEMENT INTERNAL AFFAIRS OR ITS EQUIVALENT, THE DECEDENT'S NEXT OF KIN, AND THE PRESS, AND TO EXPAND THE LIST OF TACTICAL WEAPONS THAT, WHEN USED BY A LAW ENFORCEMENT OFFICER WITH SUFFICIENT FORCE, CAUSE DEATH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-90 reads as rewritten:

"**§ 147-90. Investigations of uses of deadly force.**

In every instance in which a private citizen is killed as a result of the use of a ~~firearm~~ firearm, taser, taser-like device, chemical spray, or any other physical force sufficient to cause death by a law enforcement officer in the line of duty, the district attorney in the prosecutorial district in which the death occurred shall, upon the request of the surviving spouse or next of kin of the private citizen within 180 days of the death, request the State Bureau of Investigation to conduct an investigation into the incident. For purposes of this section, the term "next of kin" includes only the child, father, mother, sister, or brother of the private citizen.

~~Statements prepared by or on behalf of a district attorney pursuant to this section are not public records as defined by G.S. 132-1 and may be released by the district attorney only as provided by G.S. 132-1.4 or other applicable law.~~

Any report prepared for the district attorney as a result of an investigation requested pursuant to this section shall be released to the decedent's next of kin, the press, and the internal affairs unit, or its equivalent, of the agency employing the affected law enforcement officer."

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

HOUSE BILL 421:
Use of Deadly Force/SBI Investigations

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	April 28, 2009
Introduced by:	Rep. K. Alexander	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to First Edition H421-CSRV-27		Committee Counsel

SUMMARY: ***This PCS for House Bill 421 provides that when a private citizen dies immediately following an incident involving the use of an electronic control device, chemical spray, or physical force by a law enforcement officer in the line of duty the district attorney, upon request of the decedent's next of kin, may request an SBI investigation. An executive summary of the investigative report may be released, upon request, to the officer's agency or to the decedent's next of kin.***

CURRENT LAW: Under G.S. 147-90, when a private citizen is killed as a result of the use of a firearm by a law enforcement officer in the line of duty, upon request of the surviving spouse or next of kin of the deceased the district attorney may ask the SBI to investigate the death. Statements prepared for the district attorney as a result of the investigation are not public records within the meaning of the Public Records Act and are therefore not required to be disclosed to the public, except as provided in G.S. 132-1.4.

Under G.S. 132-1.4, records of criminal investigations conducted by public law enforcement agencies, records of criminal intelligence information compiled by public law enforcement agencies, and records of investigations conducted by the North Carolina Innocence Inquiry Commission, are not public records, with the exception of specified information that may include the date, time, place and circumstances of the incident, identification of the person charged and of any witnesses, and the contents of 911 and other emergency calls.

BILL ANALYSIS: This PCS for House Bill 421 would amend the law concerning the investigation of deaths involving the use of a firearm by a law enforcement officer in the line of duty. The bill would include deaths that occur as a result of the use of an electronic control device, chemical spray, or other physical force by a law enforcement officer in the line of duty. The bill would specifically exempt any report prepared for the district attorney as a result of the investigation from the Public Records Act. However, the bill would require that an executive summary of the SBI investigative report be released to the decedent's next of kin and to the law enforcement officer's agency head if they so request. The executive summary could be released to any other party upon request of the decedent's next of kin.

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

H421-SMRV-51(CSRV-27) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 421
PROPOSED COMMITTEE SUBSTITUTE H421-CSRV-27 [v.4]

4/28/2009 5:43:12 PM

Short Title: Use of Deadly Force/SBI Investigations. (Public)

Sponsors:

Referred to:

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE LIST OF TACTICAL FORCE THAT, WHEN USED BY A LAW ENFORCEMENT OFFICER MAY CAUSE A DEATH THAT IS SUBJECT TO SBI INVESTIGATION, AND TO REQUIRE THE RELEASE OF A SUMMARY OF THE INVESTIGATION RESULTS TO LOCAL LAW ENFORCEMENT AND THE DECEDENT'S NEXT OF KIN AND OTHERS UPON REQUEST OF SPECIFIED PARTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-90 reads as rewritten:

"**§ 147-90. Investigations of specified uses of ~~deadly~~ force.**

(a) In every instance in which a private citizen is killed as a result of the use of a firearm by a law enforcement officer in the line of duty, or in which a private citizen dies immediately following an incident involving the use of an electronic control device (ECD), chemical spray or physical force by a law enforcement officer in the line of duty, the district attorney in the prosecutorial district in which the death occurred shall, upon the request of the surviving spouse or next of kin of the private citizen within 180 days of the death, request the State Bureau of Investigation to conduct an investigation into the incident. For purposes of this section, the term "next of kin" includes only the child, father, mother, sister, or brother of the private citizen.

(b) Statements and reports prepared by or on behalf of a district attorney pursuant to this section are not public records as defined by G.S. 132-1 and may be released by the district attorney only as provided by G.S. 132-1.4 or other applicable law.

(b) An executive summary of any report prepared for the district attorney as a result of an investigation requested pursuant to this section shall be released to the decedent's next of kin, or to the head of the law enforcement agency of the affected law enforcement officer, or both, upon their respective request. The executive summary may be released to any other person upon the request of the decedent's next of kin."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 421 A BILL TO BE ENTITLED AN ACT TO REQUIRE DISTRICT ATTORNEYS TO RELEASE INVESTIGATION RESULTS TO LOCAL LAW ENFORCEMENT INTERNAL AFFAIRS OR ITS EQUIVALENT, THE DECEDENT'S NEXT OF KIN, AND THE PRESS, AND TO EXPAND THE LIST OF TACTICAL WEAPONS THAT, WHEN USED BY A LAW ENFORCEMENT OFFICER WITH SUFFICIENT FORCE, CAUSE DEATH.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

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

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

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, May 6, 2009

The House Committee on Ways and Means//Broadband met on Wednesday, May 6, 2009, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Mitch Gillespie, Jim Guliey, Phil Haire, Dewey Hill, Mark Hilton, Sarah Stevens and Joe Tolson. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Seitz. House Sergeant-at-Arms assisting: Earl Coker and Bob Rossi. House Page: Noelle Hayward from Caswell County sponsored by Speaker Hackney. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, page, members and visitors. The following bills were placed before the Committee:

House Bill 1185–A BILL TO BE ENTITLED: an act to allow an individual convicted of habitual driving while impaired to be eligible to petition for a hearing to restore driving privileges after ten years without any traffic or criminal convictions. Rep. Stevens moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Sutton to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Hilton was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 3*)

House Bill 1390–A BILL TO BE ENTITLED: an act to render voids any bequest or devise in a will to the attorney who drafted the will unless the attorney is a relative of the testator. The Chair called upon the bill sponsor Rep. Mackey to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Many questions and concerns were raised by committee members and constituents. Chairman Faison decided to displace the bill until the next meeting and encouraged Rep. Mackey to speak with members to get their individual concerns answered. The Bill is attached. (*Attachment 4*)

House Bill 1256–A BILL TO BE ENTITLED: an act to create the criminal offense of larceny of a motor vehicle part. The Chair called upon the bill sponsor Rep. Holloway to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Hilton was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 5*)

With no further time left for business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:51 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, May 6, 2009
1:00 P.M.
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	HB 1185	Habitual DWI-Reinstatement Petition/10 Yrs.	Representative Sutton
2.	HB 1307	Possess Prescription Drug/Not Drug Traffick.	Representative Sutton
3.	HB 1390	Wills/Bequests to Drafting Attorney.	Representative Mackey
4.	HB 1456	Drug Felon/No Large Dogs.	Representative Burr
5.	HB 1256	Larceny of a Motor Vehicle Part.	Representative Holloway
6.	HB 1198	Clarification/Hearing on License Restoration.	Representative Avila
7.	HB 1180	Consumer Choice and Investment Act of 2009.	Representative Holliman
8.	HB 1213	Amend Broadband Definition/More Competition.	Representative Brubaker

4. **Adjourn**

1pm

VISITOR REGISTRATION SHEET

Ways & Means — 5-6-09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	ACAS Audits
CHARLES PITTMAN	E-NC. AUTHORITY
LYNN HOLMES	NCTA
[illegible]	MWC
[illegible]	MWC
[illegible]	attd
[illegible]	Hunton & Wms
Daniel Long	NCUC Staff
Lemuel Hinton	NCUC Staff
Jeff Gray	City of Wilson

1pm

VISITOR REGISTRATION SHEET

Wage & Means — 5-6-09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sammy Roberson	TWC
Brad Phillips	TWC
Jack Stanley	TWC
CAROLYN RIDLEY	tw Telecom
Jack Gozart	Womble
Penny Burgin	School of Gov.
Daniel Coleman	RWCA - Raleigh
Eugene Weeks	Wake County Voter Education Coalition
Herb Crenshaw	AT&T
Jim Tarrow	AT&T
Doug Smith	AT&T
Wyn Morris	AT&T
Mark Buse	AT&T
Carlos E. Sanchez	AT&T

1pm

VISITOR REGISTRATION SHEET

Ways + Means — 5-6-09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dwight O. SPENCER	193 Crawford St. Raleigh NC 27601
Brittan Allen	Allen Law Offices, PLLC
Dwight Allen	Allen Law Offices, PLLC
Ed Finley	NMC
John Garrison	Public Staff
Robert Gruber	Public Staff
Lucy Edmondson	Public Staff
Rw Kaylor	Kaylor Law Firm
Stan Pace	Verizon
Laura Sykora	Embarq
Marty Bocock	EMBARQ

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 1185

Short Title:	Habitual DWI-Reinstatement Petition/10 Yrs.	(Public)
Sponsors:	Representatives Sutton; Harrison and Lucas.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary III.	

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN INDIVIDUAL CONVICTED OF HABITUAL DRIVING WHILE IMPAIRED TO BE ELIGIBLE TO PETITION FOR A HEARING TO RESTORE DRIVING PRIVILEGES AFTER TEN YEARS WITHOUT ANY TRAFFIC OR CRIMINAL CONVICTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-138.5(d) reads as rewritten:

"**§ 20-138.5. Habitual impaired driving.**

...

(d) A person convicted under this section shall have his license permanently revoked. A person whose license is revoked pursuant to this section shall be eligible for reinstatement in the same manner as a person convicted of violating G.S. 20-138.1, if the person has not been convicted of any criminal or motor vehicle violations in the 10 years prior to an application for reinstatement and not sooner than 10 years after the completion of any sentence imposed by the court has been completed.

...."

SECTION 2. This act becomes effective December 1, 2009, and applies to applications for reinstatement that occur on or after that date.

HOUSE BILL 1185:
Habitual DWI-Reinstatement Petition/10 Yrs

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	May 5, 2009
Introduced by:	Rep. Sutton	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H1185-CSSA-28		

SUMMARY: ***The proposed committee substitute for House Bill 1185 would allow an individual convicted of habitual impaired driving to be eligible to petition for a hearing to restore driving privileges after 10 years without any traffic or criminal convictions.***

CURRENT LAW: Current law provides that upon conviction of habitual impaired driving, the person's driver's license is permanently revoked. Unlike permanent revocations pursuant to other motor vehicle laws, a permanent revocation for habitual impaired driving is truly permanent, as there is currently no provision for the person to ever apply to have their license reinstated.

BILL ANALYSIS:

Section 1 amends G.S. 20-19(c3) to provide that if a person's license is reinstated after a habitual impaired driving conviction, the Division must place a 0.00 restriction on their license for a period of 7 years from the date of restoration.

Section 2 amends G.S. 20-19(e3) to authorize the Division to place reasonable conditions or restrictions on the person for any period up to 5 years from the date of restoration.

Section 3 adds a new subdivision (e4) to G.S. 20-19 authorizing the Division to restore the license of a person who has been convicted of habitual impaired driving, after the license has been revoked for 10 years after the completion of any sentence imposed by the court. The person must prove that they have not been convicted of a motor vehicle offense, alcohol beverage control offense, drug offense or other criminal offense in the 10 years immediately preceding the application for restoration, and that they are not currently an excessive user of alcohol, drugs, or prescription drugs, or unlawfully using any controlled substance.

Section 4 amends G.S. 20-19(k) to require a person whose license is restored pursuant to this act to provide proof of financial responsibility.

Sections 5 & 6 amend G.S. 20-17.8 to make the ignition interlock provisions applicable to a restoration of a license under this act.

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to applications for reinstatement that occur on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1185
PROPOSED COMMITTEE SUBSTITUTE H1185-CSSA-28 [v.2]

5/5/2009 8:50:49 PM

Short Title: Habitual DWI-Reinstatement Petition/10 Yrs. (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN INDIVIDUAL CONVICTED OF HABITUAL IMPAIRED DRIVING TO BE ELIGIBLE TO PETITION FOR A HEARING TO RESTORE DRIVING PRIVILEGES AFTER TEN YEARS WITHOUT ANY TRAFFIC OR CRIMINAL CONVICTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-19(c3) reads as rewritten:

"(c3) Restriction; Revocations. – When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2 (a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, G.S. 20-138.5(d), or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, habitual impaired driving, G.S. 20-138.5, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or

a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, a violation of G.S. 20-141.4, or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway or public vehicular area in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's drivers license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), or G.S. 20-138.5(d), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated."

SECTION 2. G.S. 20-19(e3) reads as rewritten:

"(e3) If the Division restores a person's license under subsection ~~(e1) or (e2)~~(e1), (e2), or (e4) of this section, it may place reasonable conditions or restrictions on the person for any period up to five years from the date of restoration."

SECTION 3. G.S. 20-19 is amended by adding a new subsection to read:

"(e4) When a person's license is revoked under G.S. 20-138.5(d), the Division may conditionally restore the license of that person after it has been revoked for at least ten years after the completion of any sentence imposed by the court, if the person provides the Division with satisfactory proof of all of the following:

(1) In the ten years immediately preceding the person's application for a restored license, the person has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any other criminal offense.

(2) The person is not currently an excessive user of alcohol, drugs, or prescription drugs, or unlawfully using any controlled substance."

SECTION 4. G.S. 20-19(k) reads as rewritten:

"(k) Before the Division restores a driver's license that has been suspended or revoked under G.S. 20-138.5(d), or under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

(1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or

(2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter."

SECTION 5. G.S. 20-17.8 is amended by adding a new subsection to read:

"(a1) Additional scope. – This section applies to a person whose license was revoked as a result of a conviction of habitual impaired driving, G.S. 20-138.5."

SECTION 6. G.S. 20-17.8(b) reads as rewritten:

"(b) Ignition Interlock Required. – Except as provided in subsection (l) of this section, when the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

(1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.

(2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.

(3) An alcohol concentration restriction as follows:

a. If the ignition interlock system is required pursuant only to subdivision (a)(1) of this section, a requirement that the person not drive with an alcohol concentration of 0.04 or greater;

b. If the ignition interlock system is required pursuant to subdivision (a)(2) or subsection (a1) of this section, a requirement that the person not drive with an alcohol concentration of greater than 0.00; or

c. If the ignition interlock system is required pursuant to subdivision (a)(1) of this section, and the person has also been convicted, based on the same set of circumstances, of: (i) driving while impaired in a commercial vehicle, G.S. 20-138.2, (ii) driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, (iii) a violation of G.S. 20-141.4, or (iv) manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, a requirement that the person not drive with an alcohol concentration of greater than 0.00."

SECTION 7. This act becomes effective December 1, 2009, and applies to applications for reinstatement that occur on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1185 A BILL TO BE ENTITLED AN ACT TO ALLOW AN INDIVIDUAL CONVICTED OF HABITUAL DRIVING WHILE IMPAIRED TO BE ELIGIBLE TO PETITION FOR A HEARING TO RESTORE DRIVING PRIVILEGES AFTER TEN YEARS WITHOUT ANY TRAFFIC OR CRIMINAL CONVICTIONS.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

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

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

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

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

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

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

HOUSE BILL 1390

Short Title:	Wills/Bequests to Drafting Attorney.	(Public)
Sponsors:	Representatives Mackey, Hall, Mobley, Faison (Primary Sponsors); K. Alexander, Cotham, Gibson, Glazier, Harrison, Jones, Parmon, Pierce, Stewart, Wainwright, and Womble.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary III.	

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO RENDER VOID ANY BEQUEST OR DEVISE IN A WILL TO THE ATTORNEY WHO DRAFTED THE WILL UNLESS THE ATTORNEY IS A RELATIVE OF THE TESTATOR.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 31 of the General Statutes is amended by adding a new section to read:

"**§ 31-4.1. Attorneys as beneficiaries.**

An attorney who drafts an attested written will, or a codicil to an attested written will, may not be a beneficiary under that will, regardless of whether the attorney receives compensation for preparing the will or codicil, unless the attorney is a relative of the testator within five degrees of kinship. Any bequest or devise to an attorney in violation of this section shall be void."

SECTION 2. G.S. 31-32 reads as rewritten:

"**§ 31-32. When and by whom caveat filed.**

(a) At the time of application for probate of any will, and the probate thereof in common form, or at any time within three years thereafter, any person entitled under such will, or interested in the estate, may appear in person or by attorney before the clerk of the superior court and enter a caveat to the probate of such will: Provided, that if any person entitled to file a caveat be within the age of 18 years, or insane, or imprisoned, then such person may file a caveat within three years after the removal of such disability.

(b) Notwithstanding the provisions of ~~the first paragraph~~ subsection (a) of this section, as to persons not under disability, a caveat to ~~the~~ probate ~~of a~~ must be filed as follows:

(1) For a will probated in common form prior to May 1, 1951, ~~must be filed~~ within seven years of the date of probate or within three years from May 1, 1951, whichever period of time is shorter.

(2) For a will in which the attorney who drafts the will is named as a beneficiary in violation of G.S. 31-4.1 within five years of the date of probate."

SECTION 3. This act becomes effective January 1, 2010, and applies to wills executed on or after that date.

HOUSE BILL 1256

Short Title:	Larceny of a Motor Vehicle Part.	(Public)
Sponsors:	Representatives Holloway, Tillis, Braxton (Primary Sponsors); Blackwood, Blust, Cleveland, Dollar, Gulley, Hilton, Justice, Lucas, Moore, Neumann, Setzer, and Starnes.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary III.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF LARCENY OF A MOTOR VEHICLE PART.

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:

"**§ 14-72.8. Larceny of motor vehicle parts.**

(a) Unless the conduct is covered under some other provision of law providing greater punishment, larceny of a motor vehicle part valued at one thousand dollars ($1,000) or less shall be punished as follows:

(1) For a first offense under this subsection a person is guilty of a Class 1 misdemeanor.

(2) For a second or subsequent offense under this subsection a person is guilty of a Class I felony.

(b) Unless the conduct is covered under some other provision of law providing greater punishment, larceny of a motor vehicle part valued at more than one thousand dollars ($1,000) shall be punished as follows:

(1) For a first offense under this subsection a person is guilty of a Class H felony.

(2) For a second or subsequent offense under this subsection a person is guilty of a Class G felony."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

HOUSE BILL 1256:
Larceny of a Motor Vehicle Part

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	April 29, 2009
Introduced by:	Reps. Holloway, Tillis, Braxton	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1256 would create the criminal offense of larceny of a motor vehicle part, and provide increased punishment for a second or subsequent offense of the same charge.***

CURRENT LAW: In general, larceny of property with a value of $1,000 or less is a Class 1 misdemeanor; larceny of property with a value of more than $1,000 is a Class H felony.

BILL ANALYSIS: House Bill 1256 would create the criminal offense of larceny of a motor vehicle part. The punishment for a first offense would be the same as under the current law. A first offense of larceny of a motor vehicle part valued at $1,000 or less would be a Class 1 misdemeanor. A first offense of larceny of a motor vehicle part valued at more than $1,000 would be a Class H felony.

The bill would provide increased punishment for persons who commit a second or subsequent offense of larceny of a motor vehicle part. A second or subsequent offense of larceny of a motor vehicle part valued at $1,000 or less would be punishable as a Class I felony; a second or subsequent offense of larceny of a motor vehicle part valued at more than $1,000 would be a Class G felony. A person who commits one felony violation and one misdemeanor violation would be thus subject to the higher penalty on the third violation.

EFFECTIVE DATE: The bill would become effective December 1, 2009 and apply to offenses occurring on or after that date.

H1256-SMRV-53(e1) v2

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1256 A BILL TO BE ENTITLED AN ACT TO CREATE THE CRIMINAL OFFENSE OF LARCENY OF A MOTOR VEHICLE PART.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

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

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

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

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

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

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, May 6, 2009

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, May 6, 2009, in Room 415 of the Legislative Office Building 15 Minutes after Session. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Lucy Allen, Angela Bryant, Mitch Gillespie, Jim Gulley, Phil Haire, Dewey Hill, Mark Hilton, Sarah Stevens, Joe Tolson, and Winkie Wilkins. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Seitz. House Sergeant-at-Arms assisting: Charles Williams, Jerald Perry, James Worth and Trey Raley. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, members and visitors. Both calendars one o'clock and after session was combined in this meeting. The following bills were placed before the Committee:

House Bill 1180–A BILL TO BE ENTITLED: an act establishing the consumer choice and investment act of 2009. Rep. Hilton moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Holliman to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized to send forth an amendment. The amendment was adopted. Also Rep. Tolson was recognized to send forth an amendment. The amendment was adopted. Rep. Hilton was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, Amendment One, Amendment Two, Proposed Committee Substitute and Committee Report are attached. (*Attachment 3*)

House Bill 1390–A BILL TO BE ENTITLED: an act to render voids any bequest or devise in a will to the attorney who drafted the will unless the attorney is a relative of the testator. Rep. Coates moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Mackey to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tolson was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 4*)

House Bill 1464–A BILL TO BE ENTITLED: an act to clarify domestic violence laws regarding when a law enforcement officer must arrest a person who has knowingly violated a valid protective order. Rep. Bryant moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Parmon to explain the bill. After the explanation of the bill

Chairman Faison opened the floor for questions and comments. Rep. Hilton was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 5*)

House Bill 490–A BILL TO BE ENTITLED: an act to grant additional purchasing flexibility to community colleges and to direct the state board of community colleges to study the need for further purchasing flexibility. Rep. Wilkins moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Tolson to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 6*)

House Bill 578–A BILL TO BE ENTITLED: an act to prohibit attorneys representing parties in a partition action from serving as commissioners to divide the land, except by consent of the parties, and to specify who may not hold a partition sale of property and who may not purchase property in a partition sale, as recommended by the partition Sales Study Committee. Rep. Gillespie moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Bryant to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized for a motion to give a favorable report. Chairman felt the vote was too close to call by voice and requested members to raise their hands. Six voted in the affirmative and seven in the negative the motion failed. The Bill is attached. (*Attachment 7*)

House Bill 1198–A BILL TO BE ENTITLED: an act to clarify that persons who had a three-year waiting period for a hearing on conditional restoration of a revoked license when the law was changed to a five-year waiting period were not affected by the change. The Chair called upon the bill sponsor Rep. Avila to explain the bill bringing the committee clarification and information which she obtained from DMV. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tillis was recognized for a motion to give a favorable report. Chairman felt the vote was too close to call by voice and requested members to raise their hands. Nine voted in the affirmative and three in the negative the motion the motion passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 8*)

House Bill 827–A BILL TO BE ENTITLED: an act to make leaving an unattended child in a motor vehicle unlawful. The Chair called upon the bill sponsor Rep. Underhill to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill and Committee Report are attached. (*Attachment 9*)

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 7:18 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, May 6, 2009
15 Mins. After Session
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	HB 827	Unattended Children in Vehicles.	Representative Underhill
2.	HB 490	Purchasing Process for Community Colleges.	Representative Tolson
3.	HB 1433	Clarify Volunteer Immunity/AED.	Representative England
4.	HB 1326	Amend Second Degree Murder.	Representative Glazier
5.	HB 578	Partition Sales/Commrs., Sellers, Buyers.	Representative Bryant
6.	HB 1299	Virtual Visitation/Family Law.	Representative Rapp
7.	HB 1464	Clarify DV Laws/Arrest/Valid Protective Order.	Representative Parmon

4. **Adjourn**

After session
6 MAY

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alicia Dow	MWC
Thom Moore	
[illegible]	NCJC
Eddie Caldwell	NC Sheriffs' Assn.
Betsy Letter	American Heart Assn
[illegible]	AT&T
Chris Farr	americans for Prosperity
Debbie Jones	DMV
Chris Brooks	DOT/DMV
Charlotte Boyd	DMV
[illegible]	AOC
Cassandra White	AOC

Charmaine Fuller — Carolina Justice Policy Center

Brittan Allen — Allen Law Offices, PLLC

After Session
6 MAY

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Hartkopf	Freedom Works
Steve Pociask	American Consumer Institute 1701 Penn. Ave NW, Suite 300, WASH DC
Dallas Woodhouse	Americans for Prosperity NC
Sammy Roberson	TWC
Mark Brock	GMBRC
Jack Stone	TWC
Brad Phillips	TWC
Mary Tribble	Brooks Pierce
Katie Grant	citizen
Mike Cummings	citizen
John Merritt	McGuire Woods
Carolyn Nolen	TW Telecom

Afternoon
6 MAY

VISITOR REGISTRATION SHEET

Ways + Means — 5-06-09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mary Henderson	Land Loss Prevention Project P.O. Box 179, Durham, NC
Dannette Sharpley	Black Family Land Trust, Inc 331 W. Main St. Suite 607 Durham, NC 27701
Sam Horne	Land Loss Prevention Proj P.O. Box 179, Durham, NC 27702 919 682 5969
Patricia A. Yancey	LLPP
Anita Earls	Southern Coalition for Social Justice 115 Market St, Ste. 470 Durham, NC 27701
MARK DOROSIN	UNC Center for Civil Rights CB 3382 Chapel Hill, NC 27599
Sarah Krishnaraj	"
Daniel R. Wilson	National Caucus and Center on Black Aged, Inc. 1220 L St. NW Washington, DC 20005
Aliya Massey	[redacted]
Arlene Entsky	Raleigh NC
Bernice L. Perry	
Octavia Rains	
Tom Giovanetti	Institute for Policy Innovation — IPI Dallas Texas

HOUSE BILL 1180

Short Title:	Consumer Choice and Investment Act of 2009.	(Public)
Sponsors:	Representatives Holliman, Brubaker, Tillis, Tolson (Primary Sponsors); Faison and Lucas.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Public Utilities.	

April 8, 2009

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE CONSUMER CHOICE AND INVESTMENT ACT OF 2009.

Whereas, the technology used to provide communications services has evolved and continues to evolve at an ever-increasing pace; and

Whereas, the resulting competition between traditional telephone service providers, cable companies offering communications services, voice-over Internet protocol (VoIP) providers, wireless communications service providers, and other communications service providers promotes and continues to promote additional consumer choices for these services; and

Whereas, traditional telephone service providers remain subject to certain antiquated statutory and regulatory restrictions that do not apply to other communications service providers; and

Whereas, this disparity may deprive consumers of traditional telephone companies of the full range of timely and competitive options and offerings that otherwise would be available to them; and

Whereas, the General Assembly finds that relaxing certain restrictions for traditional telephone companies will relieve consumers of unnecessary costs and burdens, encourage investment, and promote timely deployment of more innovative offerings at more competitive prices for customers; and

Whereas, in order to make the full range of competitive options and offerings available to consumers of communications services while maintaining inflation-based price controls for those existing customers who currently receive and wish to continue receiving only stand-alone basic residential lines from traditional telephone companies, the General Assembly hereby enacts the "Consumer Choice and Investment Act of 2009"; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-133.5 is amended by adding a new subsection to read as follows:

"(h) Notwithstanding any other provision of this Chapter, a local exchange company that is subject to rate of return regulation pursuant to G.S. 62-133 or subject to another form of regulation authorized by this section may elect to have the rates, terms, and conditions of its services determined as provided in this subsection.

(1) Definitions. – The following definitions apply in this subsection:

a. Local exchange company. – The same meaning as provided in G.S. 62-3(16a).

b. Preelection date. – The date immediately before the effective date of the local exchange company's election under this subsection.

c. Single-line basic residential service. – Single-line residential flat rate basic voice grade local service with touch tone within a traditional local calling area that provides access to available emergency services and directory assistance, the capability to access interconnecting carriers, relay services, access to operator services, and one annual local directory listing (white pages or the equivalent).

d. Stand-alone basic residential line. – Single-line basic residential service that is billed on a billing account that also does not contain another service, feature, or product that is sold by the local exchange company or an affiliate of the local exchange company and is billed on a recurring basis on the local exchange company's bill.

(2) Beginning on the date the local exchange company election under this subsection becomes effective and continuing for a period of 36 months, stand-alone basic residential lines that were in service on the preelection date will remain in service at the customer's discretion, and the local exchange company may increase rates for those lines annually by a percentage that does not exceed the percentage increase over the prior year in the Gross Domestic Product Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics, unless otherwise authorized by the Commission. With the exception of ensuring the local exchange company's compliance with the provisions of this subdivision, the Commission shall not do either of the following:

a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company's stand-alone basic residential lines that were in service on the preelection date.

b. Otherwise regulate any of the local exchange company's stand-alone basic residential lines that were in service on the preelection date.

(3) Except to the extent provided in subdivision (2) of this subsection, beginning on the date the local exchange company's election under this subsection becomes effective, the Commission shall not do either of the following:

a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company's retail services.

b. Otherwise regulate any of the local exchange company's retail services including, without limitation, any stand-alone basic residential lines put into service after the preelection date.

(4) A local exchange company's election under this subsection does not affect the obligations of an incumbent local exchange carrier, as that term is defined by section 251(h) of the Federal Telecommunications Act of 1996 (Act), under sections 251 and 252 of the Act or any Federal Communications Commission regulation relating to sections 251 and 252 of the Act.

(5) A local exchange company's election under this subsection does not affect the Commission's jurisdiction to enforce federal requirements on the local exchange company's marketing activities. However, the Commission may not adopt, impose, or enforce other requirements on the local exchange company's marketing activities."

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

HOUSE BILL 1180:
Consumer Choice and Investment Act of 2009

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Public Utilities	**Date:**	May 6, 2009
Introduced by:	Reps. Holliman, Brubaker, Tillis, Tolson	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition H1180-CSRV-24		

SUMMARY: House Bill 1180 will provide an alternative plan of regulation for telephone providers.

BILL ANALYSIS: The proposed committee substitute allows a local exchange provider (LEC) or CLEC (competing local provider) to elect to have its rates, terms and conditions of service determined pursuant to a new plan.

A LEC may only choose this new plan if the franchise or service area for the LEC meets the following standard:

> Not less than 90% of the households in the area have some combination of reliable wireless or broadband service where the broadband service is at least 1.5Mbps and the upload speed is at least 384Kbps."

Rates for basic service: After entering into this plan, the LEC may not increase the amount charged for basic residential service more than the percentage increase of the GDP each year, unless otherwise authorized by the Commission. Other than to enforce this rate increase standard, the Commission cannot regulate rates or service standards for basic service.

Authority retained by the Utilities Commission: The Utilities Commission retains the following authority:

1. Obligations of LECs under sections 251 and 252 of the Federal Telecommunications Act of 1996.
2. Federal requirements of LECSs marketing requirements.
3. Telecommunications relay service.
4. Lifeline or Link Up programs.
5. Universal Service Programs.
6. Carrier of last resort obligations.
7. The ability to hear consumer complaints regarding LECs.
8. Intercarrier compensation rates of LECS remaining under price regulation.

Each LEC or CLEC that chooses this new plan must report to the General Assembly annually on its operations. The report must include the following from the enactment of this Act:

1. Analysis of competition including lines lost and lines gained.
2. Analysis of consumer satisfaction studies.
3. Analysis or rates.

Consumer complaints: Telephone providers, including VoIP and wireless providers, must inform any customers who complain to the provider that the customer may contact the Public Staff of the Utilities Commission, and provide contact information for the Public Staff. The Public Staff must keep a record of all complaints. If the Public Staff cannot dispose of the complaint, the matter may be referred to the Commission. The standard of review by both the Public Staff and the Commission hall be whether the action or inaction of the provider is reasonable and appropriate.

Sunset: This act will sunset on June 30, 2011.

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

H1180-SMTD-48(CSRV-24) v2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1180

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

H1180-ARV-7 [v.2]

Comm. Sub. [YES]
Amends Title [NO]
H1180-CSRV-24 [v.6]

Date _____,2009

Representative K. Alexander

moves to amend the bill on page 2, lines 43-49 by deleting those lines and substituting the following:

"(4) A local exchange company's election under this subsection does not affect the obligations of an incumbent local exchange carrier, as that term is defined by section 251 (h) of the Federal Telecommunications Act of 1996 (Act), under sections 251 and 252 of the Act or any Federal Communications Commission regulation relating to sections 251 and 252 of the Act nor does it affect any authority of the Commission to act in accordance with federal or state laws or regulations including, without limitation, jurisdiction granted to set rates, terms, and conditions for access to unbundled network elements and to arbitrate and enforce interconnection agreements and to adjudicate all carrier-to-carrier complaints, including complaints regarding anticompetitive practices."

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. 1180 DATE 5/5/09

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

COMMITTEE SUBSTITUTE ✓

Rep.) Tolson
Sen.)

moves to amend the bill on page 2, lines 43 - 49

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read

"(4) A local exchange company's election under this subsection does not affect the obligation of an incumbent local exchange carrier, as that term is defined by section 251(h) of the Federal Telecommunications Act of 1996 (Act), under sections 251 and 252 of the Act or any Federal Communications Commission regulation relating to sections 251 and 252 of the Act, nor does it affect any authority of the Commission to act in accordance with federal or State laws or regulations including, without limitation, jurisdiction granted to set rates, terms, and conditions for access to unbundled network elements and enforce interconnection agreements."

SIGNED Jane P. Tolson

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1180
PROPOSED COMMITTEE SUBSTITUTE H1180-CSRV-24 [v.6]

5/6/2009 5:05:52 PM

Short Title: Consumer Choice and Investment Act of 2009. (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE CONSUMER CHOICE AND INVESTMENT ACT OF 2009.

Whereas, the technology used to provide communications services has evolved and continues to evolve at an ever-increasing pace; and

Whereas, the resulting competition between traditional telephone service providers, cable companies offering communications services, voice-over Internet protocol (VoIP) providers, wireless communications service providers, and other communications service providers promotes and continues to promote additional consumer choices for these services; and

Whereas, traditional telephone service providers remain subject to certain antiquated statutory and regulatory restrictions that do not apply to other communications service providers; and

Whereas, this disparity may deprive consumers of traditional telephone companies of the full range of timely and competitive options and offerings that otherwise would be available to them; and

Whereas, the General Assembly finds that relaxing certain restrictions for traditional telephone companies will relieve consumers of unnecessary costs and burdens, encourage investment, and promote timely deployment of more innovative offerings at more competitive prices for customers; and

Whereas, in order to make the full range of competitive options and offerings available to consumers of communications services while maintaining inflation-based price controls for those existing customers who currently receive and wish to continue receiving only stand-alone basic residential lines from traditional telephone companies, the General Assembly hereby enacts the "Consumer Choice and Investment Act of 2009"; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-133.5 is amended by adding a new subsection to read as follows:

"(h) Notwithstanding any other provision of this Chapter, upon the effective date of this subsection, a local exchange company that is subject to rate of return regulation or subject to another form of regulation authorized under this section may elect to have its rates, terms and conditions for its services determined pursuant to the plan described in this subsection, by filing notice of its intent to do so with the Commission, which election shall become effective immediately upon filing. This subsection shall only apply to a local exchange company for a

franchise area or territory in which not less than ninety percent (90%) of the households in each local exchange have some combination of reliable wireless service and/or broadband service where the download speed is at least 1.5Mbps and the upload speed is at least 384Kbps.

(1) Definitions. – The following definitions apply in this subsection:

a. Local exchange company. – The same meaning as provided in G.S. 62-3(16a).

b. Preelection date. – The date immediately before the effective date of the local exchange company's election under this subsection.

c. Single-line basic residential service. – Single-line residential flat rate basic voice grade local service with touch tone within a traditional local calling area that provides access to available emergency services and directory assistance, the capability to access interconnecting carriers, relay services, access to operator services, and one annual local directory listing (white pages or the equivalent).

d. Stand-alone basic residential line. – Single-line basic residential service that is billed on a billing account that does not also contain another service, feature, or product that is sold by the local exchange company or an affiliate of the local exchange company and is billed on a recurring basis on the local exchange company's bill.

(2) Beginning on the date that the local exchange company's election under this subsection becomes effective, stand-alone basic residential lines that were in service on the preelection date will remain in service at the customer's discretion and the local exchange company may increase rates for those lines annually by a percentage that does not exceed the percentage increase over the prior year in the Gross Domestic Product Price Index as reported by the United States Department of Labor, Bureau of Labor Statistics, unless otherwise authorized by the Commission. With the sole exception of ensuring the local exchange company's compliance with the preceding sentence, the Commission shall not:

a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company's stand-alone basic residential lines that were in service on the preelection date.

b. Otherwise regulate any of the local exchange company's stand-alone basic residential lines that were in service on the preelection date.

(3) Except to the extent provided in subdivision (2) of this subsection, beginning on the date the local exchange company's election under this subsection becomes effective, the Commission shall not do either of the following:

a. Impose any requirements related to the terms, conditions, rates, or availability of any of the local exchange company's retail services.

b. Otherwise regulate any of the local exchange company's retail services including, without limitation, any stand-alone basic residential lines put into service after the preelection date.

(4) A local exchange company's election under this subsection does not affect the obligations of an incumbent local exchange carrier under sections 251 and 252 of the Federal Telecommunications Act of 1996, or under any Federal Communications Commission regulation relating to sections 251 and 252 of the Act. For purposes of this subdivision, 'incumbent local exchange carrier' has the same meaning as in section 251(h) of the Federal Telecommunications Act of 1996,

(5) A local exchange company's election under this subsection does not affect the Commission's jurisdiction to enforce federal requirements on the local

exchange company's marketing activities. However, the Commission may not adopt, impose, or enforce other requirements on the local exchange company's marketing activities.

(6) A local exchange company's election, pursuant to the provisions of this subsection, does not affect the Commission's jurisdiction concerning the telecommunications relay service pursuant to G.S. 62-157.

(7) A local exchange company's election, pursuant to the provisions of this subsection, does not affect the Commission's jurisdiction concerning the Life Line or Link Up programs consistent with Federal Communications Commission rules including, but not limited to, 47 CFR 54.403(a)(3), as amended from time to time, and relevant orders of the North Carolina Utilities Commission issued as of January 1, 2009.

(8) A local exchange company's election, pursuant to the provisions of this subsection, does not affect the Commission's jurisdiction concerning universal service funding pursuant to G.S. 62-110(f1).

(9) A local exchange company's election, pursuant to the provisions of this subsection, does not affect the Commission's jurisdiction concerning carrier of last resort obligations pursuant to G.S. 62-110.

(10) A local exchange company's election, pursuant to the provisions of this subsection, does not prevent a consumer from seeking the assistance of the Public Staff of the North Carolina Utilities Commission to resolve a complaint with that local exchange company, as provided in G.S. 62-73.1."

SECTION 2. G.S. 62-133.5 is amended by adding a new subsection to read as follows:

"(i) To the extent applicable, a competing local provider authorized by the Commission to do business under the provisions of G.S. 62-110(f1) may also elect to have its rates, terms and conditions for its services determined pursuant to the plan described in subsection (h) of this section."

SECTION 3. G.S. 62-133.5 is amended by adding a new subsection to read as follows:

"(j) Notwithstanding any other provision of this Chapter, the Commission has jurisdiction over matters concerning switched access and intercarrier compensation of a local exchange company that has elected to operate under price regulation."

SECTION 4. G.S. 62-133.5 is amended by adding a new subsection to read as follows:

"(k) To evaluate the affordability and quality of local exchange service provided to consumers in this State, a local exchange company, or competing local provider, that elects to have its rates, terms and conditions for its services determined pursuant to the plan described in subsection (h) of this section shall make an annual report to the General Assembly on the state of its company's operations. The report shall be due thirty days after the close of each calendar year, and shall cover the period from January 1 through December 31 of the preceding year. The report shall include the following:

(1) An analysis of telecommunications competition by the local exchange company or competing local provider, including access line gain or loss and the impact on consumer choices from enactment of the Consumer Choice and Investment Act of 2009.

(2) An analysis of service quality based on customer satisfaction studies from enactment of the Consumer Choice and Investment Act of 2009.

(3) An analysis of the level of local exchange rates from enactment of the Consumer Choice and Investment Act of 2009."

SECTION 5. Article 4 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-73.1. Complaints against providers of telephone services.**

Any provider of telephone services, upon receiving a consumer complaint, shall resolve the complaint or shall (i) provide notice to the consumer of the consumer's right to contact the Public Staff of the Commission and (ii) provide to the consumer, in writing, contact information for the Public Staff including both a toll-free telephone number and an electronic mail address. The Public Staff shall keep a record of all complaints received pertaining to the provider, including the nature of each complaint and the resolution thereof. If the Public Staff determines that it cannot reasonably resolve the matter, the matter shall be referred to the Commission. The standard for review by both the Public Staff and the Commission shall be whether the action or inaction of the provider is reasonable and appropriate. This section shall apply to all providers of telephone services, including Voice over Internet Protocol, wireless, or any other form of telephonic communication in a deregulated telephone exchange."

SECTION 6. This act is effective when it becomes law, and shall expire on June 30, 2011..

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1180 A BILL TO BE ENTITLED AN ACT ESTABLISHING THE CONSUMER CHOICE AND INVESTMENT ACT OF 2009.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on PUBLIC UTILITIES.

(FOR JOURNAL USE ONLY)

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

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

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

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 1390

Short Title:	Wills/Bequests to Drafting Attorney.	(Public)
Sponsors:	Representatives Mackey, Hall, Mobley, Faison (Primary Sponsors); K. Alexander, Cotham, Gibson, Glazier, Harrison, Jones, Parmon, Pierce, Stewart, Wainwright, and Womble.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary III.	

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO RENDER VOID ANY BEQUEST OR DEVISE IN A WILL TO THE ATTORNEY WHO DRAFTED THE WILL UNLESS THE ATTORNEY IS A RELATIVE OF THE TESTATOR.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 31 of the General Statutes is amended by adding a new section to read:

"**§ 31-4.1. Attorneys as beneficiaries.**

An attorney who drafts an attested written will, or a codicil to an attested written will, may not be a beneficiary under that will, regardless of whether the attorney receives compensation for preparing the will or codicil, unless the attorney is a relative of the testator within five degrees of kinship. Any bequest or devise to an attorney in violation of this section shall be void."

SECTION 2. G.S. 31-32 reads as rewritten:

"**§ 31-32. When and by whom caveat filed.**

(a) At the time of application for probate of any will, and the probate thereof in common form, or at any time within three years thereafter, any person entitled under such will, or interested in the estate, may appear in person or by attorney before the clerk of the superior court and enter a caveat to the probate of such will: Provided, that if any person entitled to file a caveat be within the age of 18 years, or insane, or imprisoned, then such person may file a caveat within three years after the removal of such disability.

(b) Notwithstanding the provisions of ~~the first paragraph~~ subsection (a) of this section, as to persons not under disability, a caveat to ~~the~~ probate ~~of a~~ must be filed as follows:

(1) For a will probated in common form prior to May 1, 1951, ~~must be filed~~ within seven years of the date of probate or within three years from May 1, 1951, whichever period of time is shorter.

(2) For a will in which the attorney who drafts the will is named as a beneficiary in violation of G.S. 31-4.1 within five years of the date of probate."

SECTION 3. This act becomes effective January 1, 2010, and applies to wills executed on or after that date.

HOUSE BILL 1390:
Wills/Bequests to Drafting Attorney

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	May 5, 2009
Introduced by:	Reps. Mackey, Hall, Mobley, Faison	**Prepared by:**	Tim Hovis Committee Counsel
Analysis of:	PCS to First Edition H1390-CSLL-30		

SUMMARY: ***House Bill 1390 adds a new section to Chapter 31 of the General Statutes, Wills. The bill adds G.S. 31-4.1, Attorneys as beneficiaries, to provide that an attorney who drafts an attested written will, or a codicil to an attested written will, may not be a beneficiary under that will, regardless of whether the attorney receives compensation for preparing the will. The bill includes an exception for attorneys who are relatives of the testator within five degrees of kinship, a present or former spouse of the testator, or a parent, sibling, or child of the testator's present or former spouse***

The bill provides that any bequest or devise to an attorney in violation of this section is void.

Nothing in the bill prevents an attorney from being a beneficiary under a codicil to a will if the codicil was not drafted by the attorney.

G.S. 104A-1 governing degrees of kinship is set forth below.

EFFECTIVE DATE: House Bill 1390 becomes effective January 1, 2010 and applies to wills executed on or after that date.

§ 104A-1. Degrees of kinship; how computed.

In all cases where degrees of kinship are to be computed, the same shall be computed in accordance with the civil law rule, as follows:

(1) The degrees of lineal kinship of two persons is computed by counting one degree for each person in the line of ascent or descent, exclusive of the person from whom the computing begins; and

(2) The degree of collateral kinship of two persons is computed by commencing with one of the persons and ascending from him to a common ancestor, descending from that ancestor to the other person, and counting one degree for each person in the line of ascent and in the line of descent, exclusive of the person from whom the computation begins, the total to represent the degree of such kinship.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1390
PROPOSED COMMITTEE SUBSTITUTE H1390-CSRG-23 [v.1]

5/6/2009 3:26:30 PM

Short Title: Wills/Bequests to Drafting Attorney. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO RENDER VOID ANY BEQUEST OR DEVISE IN A WILL TO THE ATTORNEY WHO DRAFTED THE WILL UNLESS THE ATTORNEY IS A RELATIVE OF THE TESTATOR.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 31 of the General Statutes is amended by adding a new section to read:

"**§ 31-4.1. Attorneys as beneficiaries.**

An attorney who drafts an attested written will, or a codicil to an attested written will, may not be a beneficiary under that will or codicil, regardless of whether the attorney receives compensation for preparing the will or codicil, unless the attorney is a relative of the testator within five degrees of kinship, a present or former spouse of the testator, or a parent, sibling, or child of the testator's present or former spouse. Any bequest or devise to an attorney in violation of this section shall be void. A designation of the attorney in a fiduciary role is neither a bequest or a devise within the meaning of this section.

An attorney who drafts an attested written will, or a codicil to an attested written will, under which the attorney is a beneficiary shall attach to the will or codicil an affidavit certifying that the attorney is in compliance with the provisions of this section.

Nothing in this section prevents an attorney from being a beneficiary under a codicil to a will if the codicil was not drafted by that attorney."

SECTION 2. This act becomes effective January 1, 2010, and applies to wills executed on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1390 A BILL TO BE ENTITLED AN ACT TO RENDER VOID ANY BEQUEST OR DEVISE IN A WILL TO THE ATTORNEY WHO DRAFTED THE WILL UNLESS THE ATTORNEY IS A RELATIVE OF THE TESTATOR.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

1

HOUSE BILL 1464

Short Title:	Clarify DV Laws/Arrest/Valid Protective Order.	(Public)
Sponsors:	Representatives Parmon, Womble (Primary Sponsors); E. Floyd and McLawhorn.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary II.	

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY DOMESTIC VIOLENCE LAWS REGARDING WHEN A LAW ENFORCEMENT OFFICER MUST ARREST A PERSON WHO HAS KNOWINGLY VIOLATED A VALID PROTECTIVE ORDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-4.1(b) reads as rewritten:

"(b) A law enforcement officer ~~shall~~ must arrest and take a person into custody without a warrant or other process ~~if the officer has~~ where there is probable cause to believe that the person knowingly has violated a valid protective order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9)."

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

HOUSE BILL 1464:
Clarify DV Laws/Arrest/Valid Protective Order

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary II	**Date:**	May 6, 2009
Introduced by:	Reps. Parmon, Womble	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H1464-CSSA-29		

SUMMARY: ***The proposed committee substitute for House Bill 1464 clarifies domestic violence laws regarding when a law enforcement officer shall arrest a person who has knowingly violated a valid protective order despite the 2006 holding by the North Carolina Court of Appeals in Cockerham-Ellerbee v. The Town of Jonesville.***

CURRENT LAW: In a 2006 opinion in Cockerham-Ellerbee v. The Town of Jonesville[1], the North Carolina Court of Appeals interpreted G.S. 50B-4.1(b) to be a discretionary provision, rather than a mandatory one.

BILL ANALYSIS: The proposed committee substitute for House Bill 1464 clarifies that the intent of the General Assembly is that G.S. 50B-4.1(b) creates a mandatory provision requiring a law enforcement officer to arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe the person has knowingly violated a domestic violence protective order.

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

BACKGROUND:

§ 50B-4.1. Violation of valid protective order.

...

(b) A law enforcement officer shall arrest and take a person into custody without a warrant or other process if the officer has probable cause to believe that the person knowingly has violated a valid protective order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9).

...

[1] Cockerham-Ellerbee v. The Town of Jonesville, 176 N.C.App. 372, 626 S.E.2d 685 (2006).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1464
PROPOSED COMMITTEE SUBSTITUTE H1464-CSSA-29 [v.1]

5/6/2009 12:44:11 PM

Short Title: Clarify DV Laws/Arrest/Valid Protective Order. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY DOMESTIC VIOLENCE LAWS REGARDING WHEN A LAW ENFORCEMENT OFFICER SHALL ARREST A PERSON WHO HAS KNOWINGLY VIOLATED A VALID PROTECTIVE ORDER DESPITE THE 2006 HOLDING BY THE NORTH CAROLINA COURT OF APPEALS IN COCKERHAM-ELLERBEE V. THE TOWN OF JONESVILLE.

Whereas, in a 2006 opinion in Cockerham-Ellerbee v. The Town of Jonesville, the North Carolina Court of Appeals interpreted G.S. 50B-4.1(b) to be a discretionary provision rather than a mandatory one; and

Whereas, the intent of the North Carolina General Assembly in enacting G.S. 50B-4.1(b) was to create a mandatory provision; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding the holding by the North Carolina Court of Appeals in Cockerham-Ellerbee v. The Town of Jonesville, 176 N.C. App. 372, 626 S.E.2d 685 (2006), G.S. 50B-4.1(b) creates a mandatory provision requiring a law enforcement officer to arrest and take a person into custody without a warrant or other process if the requirements set forth in the subsection are met.

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1464 A BILL TO BE ENTITLED AN ACT TO CLARIFY DOMESTIC VIOLENCE LAWS REGARDING WHEN A LAW ENFORCEMENT OFFICER MUST ARREST A PERSON WHO HAS KNOWINGLY VIOLATED A VALID PROTECTIVE ORDER.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

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

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

HOUSE BILL 490

Short Title:	Purchasing Process for Community Colleges.	(Public)
Sponsors:	Representatives Tolson, Dockham, Barnhart, Lucas (Primary Sponsors); Blackwood, Bordsen, Carney, Coates, Cotham, Dollar, England, Goodwin, Gulley, Harrison, Hurley, Jackson, Johnson, Langdon, Martin, Samuelson, Tarleton, Underhill, E. Warren, R. Warren, and Williams.	
Referred to:	Education, if favorable, Ways and Means/Broadband Connectivity.	

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO GRANT ADDITIONAL PURCHASING FLEXIBILITY TO COMMUNITY COLLEGES AND TO DIRECT THE STATE BOARD OF COMMUNITY COLLEGES TO STUDY THE NEED FOR FURTHER PURCHASING FLEXIBILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-58.14 reads as rewritten:

"**§ 115D-58.14. Purchasing flexibility.**

(a) Community colleges may purchase ~~the same~~ supplies, equipment, and materials from noncertified sources ~~as~~ that are available under State term contracts, subject to the following conditions:

(1) The purchase price, including the cost of delivery, is less than the cost under the State term contract; ~~and~~

(2) The cost of the purchase shall not exceed the bid value benchmark established under ~~G.S. 143-53.1.~~G.S. 143-53.1; and

(3) The items are the same or substantially similar in quality, service, and performance as items available under State term contracts.

(b) The State Board of Community Colleges and the Department of Administration shall adopt policies and procedures for monitoring the implementation of this section."

SECTION 2. The State Board of Community Colleges shall review the purchasing process for community colleges and shall consider whether the State Board of Community Colleges should have the authority to increase the bid value benchmark for each community college based on the college's overall capabilities, including staff resources, purchasing compliance reviews, and audit reports.

The State Board of Community Colleges shall report the results of its study to the Joint Legislative Education Oversight Committee prior to March 30, 2010.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 490
PROPOSED COMMITTEE SUBSTITUTE H490-PCS10928-LE-28

Short Title: Purchasing Process for Community Colleges. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO GRANT ADDITIONAL PURCHASING FLEXIBILITY TO COMMUNITY COLLEGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115D-58.14 reads as rewritten:

"**§ 115D-58.14. Purchasing flexibility.**

(a) Community colleges may purchase ~~the same~~ supplies, equipment, and materials from noncertified sources ~~as~~ that are available under State term contracts, subject to the following conditions:

(1) The purchase price, including the cost of delivery, is less than the cost under the State term contract; ~~and~~

(2) The cost of the purchase shall not exceed the bid value benchmark established under ~~G.S. 143-53.1.~~G.S. 143-53.1; and

(3) The items are the same or substantially similar in quality, service, and performance as items available under State term contracts.

(a1) Notwithstanding the provisions of this section, a community college may purchase, in any lawful manner, an item that is neither available under State term contracts nor substantially similar to an item available under State term contracts.

(b) The State Board of Community Colleges and the Department of Administration shall jointly adopt policies and procedures for monitoring the implementation of this ~~section.~~section, including without limitation (i) definitions of substantial similarity, (ii) the content and frequency of reports and audits of such purchases, and (iii) a process for identifying any term contract existing as of October 1, 2009, with respect to which the exercise of purchasing flexibility could constitute a breach of that contract.

In the formation of each new term contract entered into after October 1, 2009, the Department of Administration shall, in its discretion, either provide in the contract for the purchasing flexibility set out in this section or make the term contract inapplicable to community colleges.

(c) The State Board of Community Colleges, in consultation with the Department of Administration, shall review the purchasing process for community colleges and may increase or decrease the purchasing/delegation benchmark for each community college based on the college's overall capabilities, including staff resources, purchasing compliance reviews, and audit reports. The State Board may, in its discretion, reduce a community college's purchasing/delegation benchmark at anytime. The State Board shall not increase a community

college's purchasing/delegation benchmark by more than fifteen percent (15%) in any calendar year without the concurrence of the Department of Administration within 60 days of submission. The maximum purchasing/delegation benchmark for a community college shall be one hundred thousand dollars ($100,000)."

SECTION 2. This act becomes effective October 1, 2009.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 490 A BILL TO BE ENTITLED AN ACT TO GRANT ADDITIONAL PURCHASING FLEXIBILITY TO COMMUNITY COLLEGES AND TO DIRECT THE STATE BOARD OF COMMUNITY COLLEGES TO STUDY THE NEED FOR FURTHER PURCHASING FLEXIBILITY.

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

(FOR JOURNAL USE ONLY)

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

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

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

HOUSE BILL 578

Short Title:	Partition Sales/Commrs., Sellers, Buyers.	(Public)
Sponsors:	Representatives Bryant, Michaux, Allen, Harrison (Primary Sponsors); Hall, Lucas, Parmon, Pierce, Wainwright, and Womble.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary I.	

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT ATTORNEYS REPRESENTING PARTIES IN A PARTITION ACTION FROM SERVING AS COMMISSIONERS TO DIVIDE THE LAND, EXCEPT BY CONSENT OF THE PARTIES, AND TO SPECIFY WHO MAY NOT HOLD A PARTITION SALE OF PROPERTY AND WHO MAY NOT PURCHASE PROPERTY IN A PARTITION SALE, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-7 reads as rewritten:

"**§ 46-7. Commissioners appointed.**

The superior court shall appoint three disinterested commissioners to divide and apportion such real estate, or so much thereof as the court may deem best, among the several tenants in common, or joint tenants. Provided, in cases where the land to be partitioned lies in more than one county, then the court may appoint such additional commissioners as it may deem necessary from counties where the land lies other than the county where the proceedings are instituted. For purposes of this section, attorneys who currently represent the parties in the pending partition proceeding and attorneys who have previously represented the parties in a related partition proceeding are not "disinterested" and cannot serve as commissioners, except by consent of the parties."

SECTION 2.(a) G.S. 46-31 reads as rewritten:

"**§ 46-31. ~~Clerk not to appoint self, assistant or deputy to sell real property.~~Who may not hold sale.**

~~No clerk of the superior court shall appoint himself or his assistant or deputy to make sale of any property in any proceeding before him.~~ The following persons shall not sell or be appointed to sell the property in a partition sale under Article 2 of Chapter 46 of the General Statutes:

(1) The clerk of superior court, the clerk's assistant clerk, or the clerk's deputy clerk if there has been a proceeding before that clerk of court.

(2) Attorneys who currently represent the parties in the pending partition proceeding.

(3) Attorneys who have previously represented the parties in a related partition proceeding."

SECTION 2.(b) Article 4 of Chapter 46 is amended by adding a new section to read:

"**§ 46-31.1. Ineligible purchasers.**

The following persons are not eligible to purchase land in a partition sale under Article 2 of Chapter 46 of the General Statutes:

(1) Attorneys who currently represent the parties in the pending partition proceeding or the attorneys' agents.

(2) Attorneys who have previously represented the parties in a related partition proceeding or the attorneys' agents.

(3) Commissioners who have been involved in the partition proceedings at any time or the commissioners' agents.

(4) Appraisers who have been involved in the partition proceedings at any time or the appraisers' agents."

SECTION 3. This act becomes effective October 1, 2009.

HOUSE BILL 1198

Short Title:	Clarification/Hearing on License Restoration.	(Public)
Sponsors:	Representatives Avila, Glazier (Primary Sponsors); Cleveland, Dollar, Frye, Hilton, Killian, Lucas, Samuelson, Stam, Stiller, and Sutton.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary III.	

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT PERSONS WHO HAD A THREE-YEAR WAITING PERIOD FOR A HEARING ON CONDITIONAL RESTORATION OF A REVOKED LICENSE WHEN THE LAW WAS CHANGED TO A FIVE-YEAR WAITING PERIOD WERE NOT AFFECTED BY THE CHANGE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 33 of S.L. 2007-493 reads as rewritten:

"**SECTION 33.** Sections 26, 27, 28, 29, 30, and 31 of this act become effective December 1, 2007, and apply to offenses committed on or after that date. Section 14 of this act applies to persons whose waiting period for a hearing on conditional restoration commences on or after the effective date of this act. The remainder of 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."

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

HOUSE BILL 1198:
Clarification/Hearing on License Restoration

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	April 29, 2009
Introduced by:	Reps. Avila, Glazier	**Prepared by:**	Susan Sitze
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1198 clarifies that persons who had a three year waiting period for a hearing on conditional restoration of a revoked license when the law was changed to a five year waiting period were not affected by the change.***

BILL ANALYSIS:

House Bill 1198 amends the effective date of S.L. 2007-493 to provide that Section 14 of that act applies to person whose waiting period for a hearing on conditional restoration commences on or after the effective date of the act. The act became effective August 30, 2007.

Section 14 of the act amended G.S. 20-19(i), which authorizes a DMV hearing for conditional restoration of a drivers license that has been permanently revoked. Previous law authorized the hearing after 3 years of revocation. Section 14 of the act changed the 3 years to 5 years due to the addition of some new, more serious offenses.

This bill would state that if a person was under a permanent revocation to which the provisions of 20-19(i) is applicable, prior to the effective date of the 2007 act, they are still eligible for a hearing for conditional restoration of their license after 3 years, and the change to a 5 year waiting period only applies to persons whose waiting period commenced on or after the effective date of the act.

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1198 A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT PERSONS WHO HAD A THREE-YEAR WAITING PERIOD FOR A HEARING ON CONDITIONAL RESTORATION OF A REVOKED LICENSE WHEN THE LAW WAS CHANGED TO A FIVE-YEAR WAITING PERIOD WERE NOT AFFECTED BY THE CHANGE.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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HOUSE BILL 827
Committee Substitute Favorable 4/28/09

Short Title: Unattended Children in Vehicles. (Public)

Sponsors:

Referred to:

March 30, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE LEAVING AN UNATTENDED CHILD IN A MOTOR VEHICLE UNLAWFUL.

The General Assembly of North Carolina enacts:

SECTION 1. Article 39 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-318.5. Unlawful to leave an unattended child in a motor vehicle.**

(a) It is unlawful for any parent, legal guardian, or other person responsible for a child who is less than nine years of age, to leave that child in a motor vehicle on any public street or in any public vehicular area without the child being supervised in the motor vehicle by a person who is at least 14 years of age if: (i) the conditions within or in the immediate vicinity of the motor vehicle would cause a reasonable person to believe that the conditions may present a risk to the child's health or safety or (ii) the engine of the motor vehicle is running, or the keys to the motor vehicle are anywhere in the passenger compartment of the vehicle, and the child is not in the immediate proximity or line of sight of the parent, legal guardian, or other person responsible for the child. For purposes of this section, the terms "motor vehicle," "street," and "public vehicular area" shall have the same meaning as provided in G.S. 20-4.01.

(b) Any person who violates any provision of this section shall be punished as follows:

(1) A person shall be issued a warning citation for a first offense.

(2) A person shall be guilty of a Class 2 misdemeanor for a second or subsequent offense.

(c) Notwithstanding subsection (b) of this section, the court may, in its discretion, in lieu of imposing any other penalty, require any person convicted of a violation of this section to attend and satisfactorily complete a community education program that includes instruction on the dangers of leaving young children unattended in motor vehicles. Persons required to attend and complete a prescribed community education program shall, upon completion, provide to the court satisfactory written evidence of satisfactory completion.

(d) Nothing in this section precludes prosecution under any other applicable provision of law."

SECTION 2. By December 1, 2009, the Administrative Office of the Courts shall compile a list of community education programs throughout the State that satisfy the requirements of G.S. 14-318.5(c), as enacted by this act, and shall make that list available to the chief district judge of each judicial district.

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

HB 827 A BILL TO BE ENTITLED AN ACT TO MAKE LEAVING AN UNATTENDED CHILD IN A MOTOR VEHICLE UNLAWFUL.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

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

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

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Thursday, May 7, 2009

The House Committee on Ways and Means//Broadband met on Thursday, May 7, 2009, in Room 415 of the Legislative Office Building Immediately after session. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Lucy Allen, Angela Bryant, Mitch Gillespie, Jim Gulley, Phil Haire, Mark Hilton and Sarah Stevens. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Seitz. House Sergeant-at-Arms assisting: Martha Parrish, Rod Finger and Martha Gadison. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, members and visitors. The following bill was placed before the Committee:

House Bill 1433–A BILL TO BE ENTITLED: an act to clarify the immunity from liability of persons using automated external defibrillators in emergency situations. The Chair called upon the bill sponsor Rep. Bordsen to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Allen was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 3*)

HOUSE BILL 1299–A BILL TO BE ENTITLED: an act amending the laws pertaining to custody of a minor child by defining visitation to include visitation by electronic communication. This bill was pulled by request of the bill sponsor.

House Bill 1419–A BILL TO BE ENTITLED: an act to authorize the wildlife resources commission to develop a bat eviction and exclusion curriculum to be used by other associations or organizations. The Chair called upon the bill sponsor Rep. Cleveland to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized for a motion to give a favorable report. The motion was passed. The Bill and Committee Report are attached. (*Attachment 4*)

House Bill 1456–A BILL TO BE ENTITLED: an act to provide that a person who is convicted of a felony drug offense and sentenced to community or intermediate punishment shall have imposed as a special condition of probation that the person

shall not own or have a dog that weighs more than fourteen pounds either on his or her residential premises or in a motor vehicle the person is driving and to provide that a person convicted of a felony drug offense shall not own or have a dog that weighs more than fourteen pounds either in a motor vehicle that the person is driving or on his or her residential premises for a period of six years after serving an active sentence for the drug felony. The Chair called upon the bill sponsor Rep. Burr to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Coates was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 5*)

House Bill 836–A BILL TO BE ENTITLED: an act to create the criminal offense of removing, destroying, or circumventing the operation of an electronic monitoring device. The Chair called upon the bill sponsor Rep. Tillis to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized for a motion to give a favorable report. The motion was passed. The Bill and Committee Report are attached. (*Attachment 6*)

House Bill 578–A BILL TO BE ENTITLED: an act to prohibit attorneys representing parties in a partition action from serving as commissioners to divide the land, except by consent of the parties, and to specify who may not hold a partition sale of property and who may not purchase property in a partition sale, as recommended by the partition Sales Study Committee. Rep. Stevens moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Bryant to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Bryant was recognized to send forth an amendment. The amendment was adopted. Rep. Coates was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, Amendment and Committee Report are attached. (*Attachment 7*)

House Bill 1213–A BILL TO BE ENTITLED: an act amending the definition of broadband service to encourage deployment of competitive internet protocol-enabled services. This bill was pulled by request of the bill sponsor.

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 4:06 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Thursday, May 7, 2009
Immediately After Session
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	HB 1433	Clarify Volunteer Immunity/AED.	Representative Bordsen
2.	HB 1299	Virtual Visitation/Family Law.	Representative Rapp
3.	HB 1456	Drug Felon/No Large Dogs.	Representative Burr
4.	HB 1419	Bat Protection Act.	Representative Cleveland
5.	HB 836	Removal of Electronic Monitoring Device.	Representative Tillis
6.	HB 1213	Amend Broadband Definition/More Competition.	Representative Brubaker

4. **Adjourn**

VISITOR REGISTRATION SHEET

Ways + means — 5/7/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Betsy Ketter	American Heart Assn
Jeff Mixon	Curtas
Sarah Clapp	NCWRC
DANIEL PALM	K+L GATES
[illegible]	H&W
Amanda Amington	H&B
Conor Brockett	ncsba
Karl Knapp	NCLM
[illegible]	[illegible]
Al [illegible]	NLJC
Joseph D. [illegible]	McGuireWoods

VISITOR REGISTRATION SHEET

Ways & Means — 5/7/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Erica Peterson	NCAg
Cynthia Polis	TOCOG
Beth Rice	Acton Audits

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1433
Committee Substitute Favorable 5/4/09

Short Title: Clarify Volunteer Immunity/AED. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE IMMUNITY FROM LIABILITY OF PERSONS USING AUTOMATED EXTERNAL DEFIBRILLATORS IN EMERGENCY SITUATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-21.14 reads as rewritten:

"**§ 90-21.14. First aid or emergency treatment; liability limitation.**

(a) Any person, including a volunteer medical or health care provider at a facility of a local health department as defined in G.S. 130A-2 or at a nonprofit community health center or a volunteer member of a rescue squad, who receives no compensation for his services as an emergency medical care provider, who renders first aid or emergency health care treatment to a person who is unconscious, ill or injured,

(1) When the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and

(2) When the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the person,

shall not be liable for damages for injuries alleged to have been sustained by the person or for damages for the death of the person alleged to have occurred by reason of an act or omission in the rendering of the treatment unless it is established that the injuries were or the death was caused by gross negligence, wanton conduct or intentional wrongdoing on the part of the person rendering the treatment. The immunity conferred in this section applies to any person who provides medical care in an emergency situation, whether or not the person is trained in the use of an automated external defibrillator (AED) or other medical device, or has training in health care, so long as the person receives no compensation for the person's services and otherwise meets the requirements of this section.

(a1) Recodified as § 90-21.16 by Session Laws 2001-230, s. 1(a).

(b) Nothing in this section shall be deemed or construed to relieve any person from liability for damages for injury or death caused by an act or omission on the part of such person while rendering health care services in the normal and ordinary course of his business or profession. Services provided by a volunteer health care provider who receives no compensation for his services and who renders first aid or emergency treatment to members of athletic teams are deemed not to be in the normal and ordinary course of the volunteer health care provider's business or profession.

(c) In the event of any conflict between the provisions of this section and those of G.S. 20-166(d), the provisions of G.S. 20-166(d) shall control and continue in full force and effect."

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

HOUSE BILL 1433:
Clarify Volunteer Immunity/AED

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	May 6, 2009
Introduced by:	Reps. England, Bordsen	**Prepared by:**	Susan Sitze*
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 1433 clarifies the extension of liability coverage to a person who provides medical care in an emergency situation, whether or not the person has received training in the use of an automated external defibrillator (AED) or other medical device.

CURRENT LAW:

G.S. 90-21.14(a) provides that with regard to the rendering of first aid or emergency health care treatment certain individuals in specified situations shall not be liable for:

- damages for injuries alleged to have been sustained by the person, or for
- damages for the death of the person alleged to have occurred by reason of an act or omission

in the rendering of the treatment unless it is established that the injuries were or the death was caused by gross negligence, wanton conduct or intentional wrongdoing on the part of the person rendering the treatment. This limitation on liability applies to:

- any person,
- a volunteer medical or health care provider at a facility of a local health department as defined in G.S. 130A-2 or at a nonprofit community health center, or
- a volunteer member of a rescue squad, who receives no compensation for his services as an emergency medical care provider, who renders first aid or emergency health care treatment to a person who is unconscious, ill or injured,
  - (1) When the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and
  - (2) When the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the person.

BILL ANALYSIS:

House Bill 1433 clarifies the immunity provided in the current law when rendering first aid or emergency treatment. The bill clarifies that the immunity granted in G.S. 90-21.14(a) applies to any person who provides medical care in an emergency situation, whether or not the person is trained in the use of an automated external defibrillator (AED) or other medical device, or has training in health care, so long as the person receives no compensation for the person's services and otherwise meets the requirements of the section

EFFECTIVE DATE: House Bill 1433 would become effective when it becomes law.

H1433-SMSA-72(e2) v1

**Theresa Matula, contributed substantially to this summary.*

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

HB 1433 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE IMMUNITY FROM LIABILITY OF PERSONS USING AUTOMATED EXTERNAL DEFIBRILLATORS IN EMERGENCY SITUATIONS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1419
Committee Substitute Favorable 5/6/09

Short Title: Bat Protection Act. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE WILDLIFE RESOURCES COMMISSION TO DEVELOP A BAT EVICTION AND EXCLUSION CURRICULUM TO BE USED BY OTHER ASSOCIATIONS OR ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113-333 is amended by adding a new subsection to read:

"(d) The Commission is authorized to develop a bat eviction and exclusion curriculum that may be taught by trade associations or wildlife conservation organizations for certification. The curriculum may incorporate the training that is provided as part of Wildlife Damage Control Agent certification in best management practices for removing and evicting bats from structures and in preventing bats from reentering structures."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

HB 1419 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE WILDLIFE RESOURCES COMMISSION TO DEVELOP A BAT EVICTION AND EXCLUSION CURRICULUM TO BE USED BY OTHER ASSOCIATIONS OR ORGANIZATIONS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

subsection (a) of this section shall restart and shall run a full six years from the date of the person's conviction under this section."

SECTION 3. This act becomes effective December 1, 2009, and applies to persons convicted of or placed on probation for a felony offense under G.S. 90-95 on or after that date.

HOUSE BILL 1456

Short Title:	Drug Felon/No Large Dogs.	(Public)
Sponsors:	Representatives Burr, Guice (Primary Sponsors); Cleveland and Holloway.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary II.	

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON WHO IS CONVICTED OF A FELONY DRUG OFFENSE AND SENTENCED TO COMMUNITY OR INTERMEDIATE PUNISHMENT SHALL HAVE IMPOSED AS A SPECIAL CONDITION OF PROBATION THAT THE PERSON SHALL NOT OWN OR HAVE A DOG THAT WEIGHS MORE THAN FOURTEEN POUNDS EITHER ON HIS OR HER RESIDENTIAL PREMISES OR IN A MOTOR VEHICLE THE PERSON IS DRIVING AND TO PROVIDE THAT A PERSON CONVICTED OF A FELONY DRUG OFFENSE SHALL NOT OWN OR HAVE A DOG THAT WEIGHS MORE THAN FOURTEEN POUNDS EITHER IN A MOTOR VEHICLE THAT THE PERSON IS DRIVING OR ON HIS OR HER RESIDENTIAL PREMISES FOR A PERIOD OF SIX YEARS AFTER SERVING AN ACTIVE SENTENCE FOR THE DRUG FELONY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1343 is amended by adding a new subsection to read:

"(b4) Special Condition of Probation for Certain Drug Offenders. – As a special condition of probation, a defendant who is convicted of a felony offense under G.S. 90-95 and who is sentenced to either community punishment or intermediate punishment shall not own a dog that weighs more than 14 pounds and shall not have a dog that weighs more than 14 pounds either on the premises of his or her residence or dwelling or in a motor vehicle that the defendant is driving."

SECTION 2. Article 52 of the General Statutes is amended by adding a new section to read:

"**§ 14-401.23. Size limitation on dogs that a drug felon may own or have on residential premises.**

(a) Notwithstanding any other provision of law, it is unlawful for any person who is convicted of a felony under G.S. 90-95 to do any of the following: (i) own a dog that weighs more than 14 pounds, or (ii) have a dog that weighs more than 14 pounds either on the premises of his or her residence or dwelling or in a motor vehicle that he or she is driving. The prohibition imposed by this section applies for a period of six years after the person has completed the sentence imposed on the person for the felony conviction under G.S. 90-95.

(b) If a person violates this section, then the person is guilty of a Class 3 misdemeanor punishable only by a fine of two hundred fifty dollars ($250.00) for a first offense, five hundred dollars ($500.00) for a second offense, and one thousand dollars ($1,000) for a third or subsequent offense.

(c) In addition to any penalty imposed pursuant to subsection (b) of this section when a person is convicted of a violation of this section, the six-year prohibition imposed under

HOUSE BILL 1456:
Drug Felon/No Large Dogs

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary II	**Date:**	April 29, 2009
Introduced by:	Reps. Burr, Guice	**Prepared by:**	Brenda J. Carter
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 1456 would prohibit a person who is convicted of a felony drug offense from owning or having a dog that weighs more than 14 pounds at the person's residence or in the person's automobile, while on probation and for a period of six years after the person completes the criminal sentence imposed for the drug offense.

BILL ANALYSIS: House Bill 1456 provide as a special condition of probation that a person who is convicted of a felony drug offense is prohibited from owning or having a dog that weighs more than 14 pounds at his or her residence or in his or her automobile while driving. The bill also makes it unlawful for any person convicted of a drug felony to own a dog that weighs more than 14 pounds or to have such a dog on the premises of his or her residence or in a car that he or she is driving. The prohibition applies for 6 years after the person has completed his or her sentence. Violation is a Class 3 misdemeanor subject to a fine of $250. For a second offense, the fine is $500. For a third or subsequent offense, the fine is $1,000. Upon violation, the 6-year time period restarts and runs for a full 6 years from the violation.

EFFECTIVE DATE: The bill would become effective December 1, 2009 and apply to persons convicted of or placed on probation for a felony drug offense on or after that date.

H1456-SMRV-55(e1) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1456 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PERSON WHO IS CONVICTED OF A FELONY DRUG OFFENSE AND SENTENCED TO COMMUNITY OR INTERMEDIATE PUNISHMENT SHALL HAVE IMPOSED AS A SPECIAL CONDITION OF PROBATION THAT THE PERSON SHALL NOT OWN OR HAVE A DOG THAT WEIGHS MORE THAN FOURTEEN POUNDS EITHER ON HIS OR HER RESIDENTIAL PREMISES OR IN A MOTOR VEHICLE THE PERSON IS DRIVING AND TO PROVIDE THAT A PERSON CONVICTED OF A FELONY DRUG OFFENSE SHALL NOT OWN OR HAVE A DOG THAT WEIGHS MORE THAN FOURTEEN POUNDS EITHER IN A MOTOR VEHICLE THAT THE PERSON IS DRIVING OR ON HIS OR HER RESIDENTIAL PREMISES FOR A PERIOD OF SIX YEARS AFTER SERVING AN ACTIVE SENTENCE FOR THE DRUG FELONY.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 836*
Committee Substitute Favorable 5/5/09

Short Title: Removal of Electronic Monitoring Device. (Public)

Sponsors:

Referred to:

March 30, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF REMOVING, DESTROYING, OR CIRCUMVENTING THE OPERATION OF AN ELECTRONIC MONITORING DEVICE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 30 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-226.3. Interference with electronic monitoring devices.**

(a) For purposes of this section, the term "electronic monitoring device" includes any electronic device that is used to track the location of a person.

(b) It is unlawful for any person to knowingly and without authority remove, destroy, or circumvent the operation of an electronic monitoring device that is being used for the purpose of monitoring a person who is:

(1) Complying with a house arrest program;

(2) Wearing an electronic monitoring device as a condition of bond or pretrial release;

(3) Wearing an electronic monitoring device as a condition of probation; or

(4) Wearing an electronic monitoring device as a condition of parole or post-release supervision.

(c) It is unlawful for any person to knowingly and without authority request or solicit any other person to remove, destroy, or circumvent the operation of an electronic monitoring device that is being used for the purposes described in subsection (b) of this section.

(d) Violation of this section by a person who is required to comply with electronic monitoring as a result of a conviction for a criminal offense is a felony one class lower than the underlying felony or a misdemeanor one class lower than the underlying misdemeanor, except that, if the underlying felony is a Class I, then violation of this section is a Class A1 misdemeanor. Violation of this section by a person who is required to comply with electronic monitoring as a condition of bond or pretrial release is a Class 1 misdemeanor. Violation of this section by any other person is a Class 2 misdemeanor."

SECTION 2. This act becomes effective December 1, 2009, and applies to acts committed on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

HB 836 A BILL TO BE ENTITLED AN ACT TO CREATE THE CRIMINAL OFFENSE OF REMOVING, DESTROYING, OR CIRCUMVENTING THE OPERATION OF AN ELECTRONIC MONITORING DEVICE.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 578

Short Title:	Partition Sales/Commrs., Sellers, Buyers.	(Public)
Sponsors:	Representatives Bryant, Michaux, Allen, Harrison (Primary Sponsors); Hall, Lucas, Parmon, Pierce, Wainwright, and Womble.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary I.	

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT ATTORNEYS REPRESENTING PARTIES IN A PARTITION ACTION FROM SERVING AS COMMISSIONERS TO DIVIDE THE LAND, EXCEPT BY CONSENT OF THE PARTIES, AND TO SPECIFY WHO MAY NOT HOLD A PARTITION SALE OF PROPERTY AND WHO MAY NOT PURCHASE PROPERTY IN A PARTITION SALE, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 46-7 reads as rewritten:

"**§ 46-7. Commissioners appointed.**

The superior court shall appoint three disinterested commissioners to divide and apportion such real estate, or so much thereof as the court may deem best, among the several tenants in common, or joint tenants. Provided, in cases where the land to be partitioned lies in more than one county, then the court may appoint such additional commissioners as it may deem necessary from counties where the land lies other than the county where the proceedings are instituted. For purposes of this section, attorneys who currently represent the parties in the pending partition proceeding and attorneys who have previously represented the parties in a related partition proceeding are not "disinterested" and cannot serve as commissioners, except by consent of the parties."

SECTION 2.(a) G.S. 46-31 reads as rewritten:

"**§ 46-31. ~~Clerk not to appoint self, assistant or deputy to sell real property.~~Who may not hold sale.**

~~No clerk of the superior court shall appoint himself or his assistant or deputy to make sale of any property in any proceeding before him.~~ The following persons shall not sell or be appointed to sell the property in a partition sale under Article 2 of Chapter 46 of the General Statutes:

(1) The clerk of superior court, the clerk's assistant clerk, or the clerk's deputy clerk if there has been a proceeding before that clerk of court.

(2) Attorneys who currently represent the parties in the pending partition proceeding.

(3) Attorneys who have previously represented the parties in a related partition proceeding."

SECTION 2.(b) Article 4 of Chapter 46 is amended by adding a new section to read:

"**§ 46-31.1. Ineligible purchasers.**

The following persons are not eligible to purchase land in a partition sale under Article 2 of Chapter 46 of the General Statutes:

(1) Attorneys who currently represent the parties in the pending partition proceeding or the attorneys' agents.

(2) Attorneys who have previously represented the parties in a related partition proceeding or the attorneys' agents.

(3) Commissioners who have been involved in the partition proceedings at any time or the commissioners' agents.

(4) Appraisers who have been involved in the partition proceedings at any time or the appraisers' agents."

SECTION 3. This act becomes effective October 1, 2009.

HOUSE BILL 578:
Partition Sales/Commrs., Sellers, Buyers

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	May 5, 2009
Introduced by:	Reps. Bryant, Michaux, Allen, Harrison	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to First Edition H578-CSRV-22		

SUMMARY: ***This proposed committee substitute for House Bill 578 makes various changes to the laws relating to partition sales. The bill would require that respondents in a partition proceeding be notified of their right to seek legal counsel, and would clarify the requirements for providing notice to unknown or unlocatable parties in a partition proceeding. The bill would require that the court take into account the totality of the circumstances in determining whether a partition in kind can be made without substantial injury to the parties, and it sets out a number of factors that the court must consider in making its determination. The bill would codify the current practice of granting owners credit for their existing interest in the land when bidding on it in a partition sale, and would require the court to order an independent appraisal if requested and paid for by a party who challenges the amount bid in a partition sale. The bill would also prohibit specified parties from purchasing property in a partition sale. The bill was recommended by the Partition Sales Study Committee.***

[As introduced, this bill was identical to S613, as introduced by Sen. Atwater, which is currently in Senate Judiciary II.]

CURRENT LAW: To legally "partition" property means to bring a proceeding in court to force the physical division or sale of real property and in the event of sale to have the property or proceeds from sale of the property divided among co-owners of the property. Under the laws governing the partition of real property (Chapter 46 of the General Statutes), one or more persons claiming joint ownership in real property may petition the superior court for partition of the property.

BILL ANALYSIS: **Section 1** of the bill would enact a new provision specifying that the period of time for answering a summons in a partition proceeding is governed by G.S. 1-394, which pertains to contested special proceedings. It also would require that a written notice be attached to the summons making respondents aware of the right to seek legal advice, that free legal services may be available by contacting legal services organizations, and that the court has the authority to order payment of attorneys fees as part of the costs of the proceeding.

Section 2 of the bill would amend the statute concerning the notification of unknown parties to a partition proceeding. Under existing law, when the court determines that there are persons with an interest in the property whose names are unknown and cannot be ascertained by the petitioner, the court can order that notice be made by publication in a newspaper. The bill would require that notice by publication include a full description of the property, and require the court to appoint someone to represent any unknown or unlocatable parties.

Section 3 of the bill would amend the law regarding sale of the real property in lieu of a physical division of the property. Under existing law, the court is required to order a sale of the property if it finds that an actual partition of the property cannot be made without substantial injury to any of the parties. The bill would require that the court take into account the "totality of the circumstances" when making its decision, and it sets out a number of factors that the court must consider, including such things as:

- Whether the property can be fairly and equitable divided
- Whether the value of a parcel share from physical division of the property would equal or exceed the value of a monetary share of the proceeds from the sale of the property as a whole
- Long-standing ownership by any individual owner, any owner's particular sentimental links or attachment to the property, the uses being made of the property by any of the owners, and the degree to which the owners have contributed a pro rata share of taxes, insurance, and other expenses of maintaining the property

The court would be required to use the remedy of owelty when it would aid in making a partition in kind occur without substantial injury to the parties. "Owelty" is a sum of money paid by one co-owner to another for the purpose of equalizing a partition when the land is not susceptible of division into exactly equal shares. "Partition in kind" means the act of physically dividing real property held jointly or in common by two or more persons into separately owned interests.

Section 4 of the bill would amend the statute concerning the sale procedure for partition sales, to provide that any cotenant making an offer to purchase the entire parcel would receive credit for the value of his or her share and received a corresponding reduction in the amount owed after deducting the costs and fees associated with the sale. The bill would allow two or more cotenants to aggregate the credit for their interests.

Section 5 of the bill would amend the law pertaining to a petition for revocation of an order confirming the partition sale of real property by making a technical change, and by adding a new provision that would require the court to order an independent appraisal of the property upon request of the petitioner. If, based on the appraisal and other evidence, the court finds the sale price to be inadequate the court may revoke the order confirming the sale. The cost of the appraisal would be apportioned to all parties requesting it, and the court could require the parties to pay all or part of that cost prior to the appraisal.

Section 6 of the bill specifies that the following persons would not be eligible to purchase land in a partition sale:

- Attorneys, or their agents, who currently represent parties in the pending partition proceeding
- Commissioners, or their agents, who have been involved in the partition proceedings
- Appraisers, or their agents, who have been involved in the partition proceedings

EFFECTIVE DATE: The bill would become effective October 1, 2009 and apply to partition actions filed on or after that date.

H578-SMRV-64(CSRV-22) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 578
PROPOSED COMMITTEE SUBSTITUTE H578-CSRV-22 [v.4]

5/4/2009 6:01:26 PM

Short Title: Partition Sales/Commrs., Sellers, Buyers. (Public)

Sponsors:

Referred to:

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE NOTICE OF RIGHT TO SEEK LEGAL COUNSEL AND CLARIFY NOTICE REQUIRED TO PARTIES WHO MAY BE UNKNOWN OR UNLOCATABLE IN A PARTITION PROCEEDING; TO EXPAND THE CURRENT PURELY ECONOMIC "SUBSTANTIAL INJURY" TEST TO DETERMINE WHEN A COURT SHOULD ORDER A PARTITION SALE TO ALLOW CONSIDERATION OF NONECONOMIC FACTORS; TO CODIFY THE CURRENT PRACTICE OF GRANTING OWNERS CREDIT FOR THEIR EXISTING INTEREST IN LAND WHEN BIDDING ON A PARTITION SALE; TO REQUIRE A COURT TO ORDER AN INDEPENDENT APPRAISAL IF REQUESTED AND PAID FOR BY A PARTY TO THE PARTITION WHO CHALLENGES THE AMOUNT BID IN A PARTITION SALE; TO SPECIFY WHO MAY NOT PURCHASE PROPERTY IN A PARTITION SALE; AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 46 of the General Statutes is amended by adding a new section to read:

"**§ 46-2.1 Summons; notice.**

(a) In partition proceedings initiated under this Chapter, the period of time for answering a summons is provided in G.S. 1-394.

(b) Written notice shall be attached to the summons in a manner reasonably calculated to make the respondent aware of the following:

(1) That the respondent has the right to seek the advice of an attorney, and that free legal services may be available to the respondent by contacting Legal Aid of North Carolina or other legal services organizations.

(2) That pursuant to G.S. 6-21 the court has the authority, in its discretion, to order reasonable attorneys fees to be paid as a part of the costs of the proceeding and to apportion those costs among all the parties."

SECTION 2. G.S. 46-6 reads as rewritten:

"**§ 46-6. Unknown or unlocatable parties; ~~summons and~~ summons, notice, and representation.**

(a) If, upon the filing of a petition for partition, it be made to appear to the court by affidavit or otherwise that there are any persons interested in the premises whose names are unknown to and cannot after due diligence be ascertained by the petitioner, the court shall order notices to be given to all such persons by a publication of the petition, or of the substance

thereof, with the order of the court thereon, in one or more newspapers to be designated in the order. The notice by publication shall include a description of the property which includes the street address, if any, or other common designation for the property, if any, and the legal description of the property.

(b) ~~If~~ Before or after such general notice by publication if any person interested in the premises and entitled to notice fails to appear, the court shall ~~in its discretion~~ appoint some disinterested person to represent the owner of any shares in the property to be divided, the ownership of which is unknown or unlocatable and unrepresented. "

SECTION 3. G.S. 46-22 reads as rewritten:

"**§ 46-22. Sale in lieu of partition.**

(a) The court shall order a sale of the property described in the petition, or of any part, only if it finds, by a preponderance of the evidence, that an actual partition of the lands cannot be made without substantial injury to any of the interested ~~parties.~~ parties taking into account the totality of the circumstances.

(b) ~~"Substantial injury" means the fair market value of each share in an in-kind partition would be materially less than the share of each cotenant in the money equivalent that would be obtained from the sale of the whole, and if an in-kind division would result in material impairment of the cotenant's rights.~~ In determining whether a partition in kind of all the property or some of the property cannot be made without substantial injury, the court shall consider whether the factors supporting the sale of the whole outweigh the factors against a sale of the whole taking into account the totality of the circumstances. The court shall consider:

(1) Whether the property is able to be fairly and equitably divided, in whole or in part, between the party or parties seeking a partition by sale and those seeking to remain tenants in common;

(2) Whether a partition in-kind would apportion the property in such a way that the fair market value of the parcels resulting from the division would be materially less than the share of each cotenant in the money equivalent that would be obtained from the sale of the whole, based upon a valuation that takes into account the type of sale conditions under which the court-ordered sale would occur;

(3) Whether an in-kind division would result in material impairment of the petitioner's rights;

(4) Evidence of long-standing ownership by any individual owner as supplemented by the period of time that any person or persons that such a cotenant is or was related to by blood, marriage, or adoption who was in the chain of title owned an interest in the property;

(4) Any owner's particular sentimental links with or attachment to the property, including any attachments arising out of the fact that the property has ancestral or other unique or special value to one or more of the co-owners;

(5) The use being made of the property by any of the owners and the degree to which this owner or owners would be harmed if they could not continue to use the property for these purposes;

(6) The degree to which the owners have contributed their pro rata share of the property taxes, insurance, and other carrying charges associated with maintaining ownership of the real property as well as the degree to which the owners have contributed to the physical improvement or the upkeep of the property, including any upkeep related to protecting the interests of the owners against any person who has no legal claim to the property but who attempts to use the property without the consent of the owners; and

(7) Any other economic or noneconomic factors that the court finds appropriate to consider.

(b1) The court shall use the remedy of owelty where such remedy can aid in making a partition in kind occur without substantial injury to the parties.

(c) The court shall specifically find the facts supporting an order of sale of the property.

(d) The party seeking a sale of the property shall have the burden of proving substantial injury under the provisions of this section."

SECTION 4. G.S. 46-28 reads as rewritten:

"**§ 46-28. Sale procedure.**

(a) The procedure for a partition sale shall be the same as is provided in Article 29A of Chapter 1 of the General ~~Statutes.~~ Statutes, except as provided herein.

(b) The commissioners shall certify to the court that at least 20 days prior to sale a copy of the notice of sale was sent by first class mail to the last known address of all petitioners and respondents who previously were served by personal delivery or by registered or certified mail. The commissioners shall also certify to the court that at least ten days prior to any resale pursuant to G.S. 46-28.1(e) a copy of the notice of resale was sent by first class mail to the last known address of all parties to the partition proceeding who have filed a written request with the court that they be given notice of any resale. An affidavit from the commissioners that copies of the notice of sale and resale were mailed to all parties entitled to notice in accordance with this section shall satisfy the certification requirement and shall also be deemed prima facie true. If after hearing it is proven that a party seeking to revoke the order of confirmation of a sale or subsequent resale was mailed notice as required by this section prior to the date of the sale or subsequent resale, then that party shall not prevail under the provisions of G.S. 46-28.1(a)(2)a. and b.

(c) Any cotenant making an offer in a sale of an entire parcel shall receive credit for the interest the cotenant already owns and shall receive a corresponding reduction in the amount of money owed after deducting the costs and fees associated with the sale. When making a joint offer, cotenants may aggregate the credit for the cotenants' interests."

SECTION 5. G.S. 46-28.1 reads as rewritten:

"**§ 46-28.1. Petition for revocation of confirmation order.**

(a) Notwithstanding G.S. 46-28 or any other provision of law, an order confirming the partition sale of real property shall not become final and effective until 15 days after entered. At any time before the confirmation order becomes final and effective, any party to the partition proceeding or the purchaser may petition the court to revoke its order of confirmation and to order the withdrawal of the purchaser's offer to purchase the property upon the following grounds:

(1) In the case of a purchaser, a lien remains unsatisfied on the property to be conveyed.

(2) In the case of any party to the partition proceeding:

a. Notice of the partition was not served on the petitioner for revocation as required by Rule 4 of the Rules of Civil Procedure; or

b. Notice of the sale was not mailed to the petitioner for revocation as required by G.S. 46-28(b); or

c. The amount bid or price offered is inadequate and inequitable and will result in irreparable damage to the owners of the real property.

In no event shall the confirmation order become final or effective during the pendency of a petition under this section. No upset bid shall be permitted after the entry of the confirmation order.

(b) The party petitioning for revocation shall deliver a copy of the petition to all parties required to be served under Rule 5 of G.S. 1A-1, and the officer or person designated to make such sale in the manner provided for service of process in Rule 4(j) of G.S. 1A-1. The court shall schedule a hearing on the petition within a reasonable time and shall cause a notice of the

hearing to be served on the petitioner, the officer or person designated to make such a sale and all parties required to be served under Rule 5 of G.S. 1A-1.

(c) In the case of a petition brought under this section by a purchaser claiming the existence of an unsatisfied lien on the property to be conveyed, if the purchaser proves by a preponderance of the evidence that:

(1) A lien remains unsatisfied on the property to be conveyed; and
(2) The purchaser has not agreed in writing to assume the lien; and
(3) The lien will not be satisfied out of the proceeds of the sale; and
(4) The existence of the lien was not disclosed in the notice of sale of the property, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

The order of the court in revoking an order of confirmation under this section may not be introduced in any other proceeding to establish or deny the existence of a lien.

(d) In the case of a petition brought pursuant to this section by a party to the partition proceeding, if the court finds by a preponderance of the evidence that petitioner has proven a case pursuant to sub-subdivision (a)(2) a., b., or c. of ~~subsection (a)(2),~~ this section, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security to the purchaser tendered pursuant to the offer.

(d1) In the case of a petition brought pursuant to sub-subdivision (a)(2)c. of this section, and when an independent appraisal has not been previously entered into evidence in the action, upon the request of the petitioner the court shall order an independent appraisal by a state licensed or state certified real estate appraiser in accordance with the Uniform Standards of Professional Appraisal Practice. If based on this appraisal and all the evidence presented, the court finds the amount bid or price offered to be inadequate, inequitable, and resulting in irreparable damage to the owners, the court may revoke the order confirming the sale, order the withdrawal of the purchaser's offer, and order the return of any money or security tendered by the purchaser pursuant to the offer. The cost of an independent appraisal shall be apportioned to all parties requesting the appraisal, and the court in its discretion may require the parties to make full or partial payment of the actual cost prior to the appraisal.

(e) If the court revokes its order of confirmation under this section, the court shall order a resale. The procedure for a resale is the same as is provided for an original public sale under Article 29A of Chapter 1 of the General Statutes."

SECTION 6. Article 4 of Chapter 46 is amended by adding a new section to read:

"**§ 46-31.1. Ineligible purchasers.**

The following persons are not eligible to purchase land in a partition sale under this Article:

(1) Attorneys, or the attorneys' agents, who currently represent the parties in the pending partition proceeding.
(2) Commissioners, or the commissioners' agents, who have been involved in the partition proceedings at any time.
(3) Appraisers, or the appraisers' agents, who have been involved in the partition proceedings at any time."

SECTION 7. This act becomes effective October 1, 2009 and applies to partition actions filed on or after that date

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H578 - CSRV-22[v.5] DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Bryant
Sen.)

moves to amend the bill on page 1, line 16

( ) WHICH CHANGES THE TITLE

by deleting "attached to the summons" and inserting "included in the petition"

and on page 1, line 33

by inserting "may include" between [redacted] and "the"

and on page 3, line 20

by deleting "the petitioner" and inserting "either party"

SIGNED Angela Bryant

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 578 A BILL TO BE ENTITLED AN ACT TO PROHIBIT ATTORNEYS REPRESENTING PARTIES IN A PARTITION ACTION FROM SERVING AS COMMISSIONERS TO DIVIDE THE LAND, EXCEPT BY CONSENT OF THE PARTIES, AND TO SPECIFY WHO MAY NOT HOLD A PARTITION SALE OF PROPERTY AND WHO MAY NOT PURCHASE PROPERTY IN A PARTITION SALE, AS RECOMMENDED BY THE PARTITION SALES STUDY COMMITTEE.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

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

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

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Monday, May 11, 2009

The House Committee on Ways and Means//Broadband Connectivity met on Monday, May 11, 2009, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Angela Bryant, Jim Gulley, Dewey Hill, Sarah Stevens, Joe Tolson, and Winkie Wilkins. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Seitz. House Sergeant-at-Arms assisting: John Brandon and James Worth. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, members and visitors. The following bill was placed before the Committee:

House Bill 1307–A BILL TO BE ENTITLED: an act to clarify that possession of certain prescription drugs is not punishable as trafficking in opium or heroin and to set out the criminal penalty for that offense. Rep. Tillis moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Sutton to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tolson was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 3*)

House Bill 283–A BILL TO BE ENTITLED: an act clarifying the definition of broadband internet access in North Carolina. Rep. Wilkins moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Alexander to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Bryant was recognized to send forth an amendment. The amendment was adopted. Also Rep. Tolson was recognized to send forth and amendment. The amendment was adopted. Rep. Coates was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, Amendment one and two, and Committee Report are attached. (*Attachment 4*)

House Bill 1299–A BILL TO BE ENTITLED: an act amending the laws pertaining to custody of a minor child by defining visitation to include visitation by electronic communication. The Chair called upon the bill sponsor Rep. Rapp to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and

comments. Rep. Stevens was recognized to send forth an amendment. The amendment was adopted. Rep. Stevens was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, Amendment and Committee Report are attached. (*Attachment 5*)

House Bill 1447–A BILL TO BE ENTITLED: an act to provide that the identity of an individual who provides a tip for an unsolved case through crime stoppers or similar organizations is not a public record, to provide that the communication received by a crime stoppers organization is not subject to discovery or admissible in a court proceeding, and to provide that a law enforcement agency has a duty to maintain the confidentiality of a crime stoppers Tip. The Chair called upon the bill sponsor Rep. Wiley to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, and Committee Report are attached. (*Attachment 6*)

House Bill 1213–A BILL TO BE ENTITLED: an act amending the definition of broadband service to encourage deployment of competitive internet protocol-enabled services. Rep. Coates moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor which was not present so, Rep. Tillis explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 7)*

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 2:37 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Monday, May 11, 2009
1:00 PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	HB 283	Clarify Broadband Internet Access Definition.	Representative Alexander
2.	HB 1299	Virtual Visitation/Family Law.	Representative Rapp
3.	HB 1307	Possess Prescription Drug/Not Drug Traffick.	Representative Sutton
4.	HB 1447	Crime Stoppers Tips Are Confidential.	Representative Wiley
5.	HB 1303	False Report To Law Enforcement.	Representative Blust
6.	HB 1213	Amend Broadband Definition/More Competition.	Representative Brubaker

4. **Adjourn**

VISITOR REGISTRATION SHEET

Ways + Means — 5/11

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
EDDIE CALDWELL	NC Sheriffs' Assn.
Bill Scoggin	MG
[illegible]	[illegible]
[illegible]	NCHBA
[illegible]	ATT
[illegible]	AAIDS
[illegible]	N.C. Telco Alliance
[illegible]	NC CWA
[illegible]	TWC
[illegible]	T4C
Marty Bocock	Embarq
[illegible]	Pittsboro, NC

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Brewer	EMBARQ
Dwight Allen	Allen Law Offices, PLLC
David Boray	MWC
Stan Pace	Verizon
Rob Caylor	Caylor Law Firm
Tommy Fullbright	H & W
[illegible]	MWC
[illegible]	NCBA
Rebecca Troutman	NCACC
Christopher Hamond	NCACC

HOUSE BILL 1307

Short Title:	Possess Prescription Drug/Not Drug Traffick.	(Public)
Sponsors:	Representative Sutton.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary III.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT POSSESSION OF CERTAIN PRESCRIPTION DRUGS IS NOT PUNISHABLE AS TRAFFICKING IN OPIUM OR HEROIN AND TO SET OUT THE CRIMINAL PENALTY FOR THAT OFFENSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95(h)(4) reads as rewritten:

"(4) ~~Any~~ Except as provided in subsection (j) of this section, any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:

a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars ($500,000)."

SECTION 2. G.S. 90-95 is amended by adding a new subsection to read:

"(j) Notwithstanding G.S. 90-95(h)(4), any person who, in violation of G.S. 90-95(a)(3), possesses a controlled substance in Schedule II that is a synthetic opioid of oxycodone hydrochloride combined with acetaminophen and that is a commercial drug product with FDA approval manufactured and distributed by a pharmaceutical company lawfully doing business in the United States shall not be punished for a violation of G.S. 90-95(h)(4) but instead shall be punished as provided by this subsection. If the quantity of the controlled substance or mixture involved:

(1) Is less than 250 tablets, capsules, or other dosage units, the person shall be punished as a Class I felon;

(2) Is 250 tablets, capsules, or other dosage units or more, but less than 500 tablets, capsules, or other dosage units, the person shall be punished as a Class G felon;

(3) Is 500 tablets, capsules, or other dosage units or more, but less than 1,000 tablets, capsules, or other dosage units, the person shall be punished as a Class F felon;

(4) Is 1,000 tablets, capsules, or other dosage units or more, the person shall be punished as a Class D felon."

SECTION 3. This act becomes effective December 1, 2009, 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 2009

H D

HOUSE BILL 1307
PROPOSED COMMITTEE SUBSTITUTE H1307-CSSA-34 [v.1]

5/10/2009 12:06:29 PM

Short Title: Possess Prescription Drug/Not Drug Traffick. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE HOUSE SELECT STUDY COMMISSION ON TRAFFICKING OF PRESCRIPTION MEDICATIONS.

The General Assembly of North Carolina enacts:

SECTION 1.1 There is created the House Select Study Commission on Trafficking of Prescription Medications. The purpose of the Commission is to review State law pertaining to trafficking of controlled substances in relation to the application of those laws to prescription medications.

SECTION 1.2. The Commission shall consist of 9 members as follows:

(1) Six members of the House of Representatives appointed by the Speaker of the House of Representatives.

(2) An elected district attorney, appointed by the Speaker of the House of Representatives, after consultation with the Conference of District Attorneys.

(3) A public defender, appointed by the Speaker of the House of Representatives, after consultation with the Office of Indigent Defense Services.

(4) An attorney engaged in the private practice of criminal law, appointed by the Speaker of the House of Representatives.

The Speaker of the House of Representatives shall designate one Representative as chair. Vacancies on the Commission shall be filled by the same appointing authority as made the initial appointment. The Commission shall expire upon delivering its final report.

The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the call of the chair. The Commission may meet in the Legislative Building or the Legislative Office Building. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' Supervisors of Clerks shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

SECTION 1.3. In conducting the study, the Commission shall consider the following:

(1) What currently manufactured prescription medications are covered by the drug trafficking laws of this State.

(2) Whether the current drug quantities in the trafficking statutes are appropriate quantities when applied to prescription medications and taking into consideration the penalties provided.

(3) Whether trafficking of prescription medications should be addressed separately from other drugs.

(4) What penalties are appropriate for the trafficking of prescription medications and on what quantities of prescription medication should those penalties be determined.

SECTION 1.4. The House Select Study Commission on Trafficking of Prescription Medications shall make its final report to the 2010 Regular Session of the 2009 General Assembly upon its convening.

SECTION 1.5. All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

SECTION 1.6. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this Part.

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

HOUSE BILL 1307:
Possess Prescription Drug/Not Drug Traffick

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	May 10, 2009
Introduced by:	Rep. Sutton	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H1307-CSSA-34		

SUMMARY: ***The proposed committee substitute for House Bill 1307 creates a House Select Study Commission on Trafficking of Prescription Medications.***

BILL ANALYSIS: The proposed committee substitute for House Bill 1307 creates a 9 member House Select Study Commission on Trafficking of Prescription Medications. The Commission is composed of 6 members of the House of Representatives, an elected district attorney, a public defender, and an attorney engaged in the private practice of criminal law.

The Commission is directed to look at the current laws applicable to trafficking of controlled substances and which prescription medications may fall under those laws, and consider whether the quantities and penalties provided in current law are appropriate to prescription medications, as well as whether the trafficking of prescription medications should be addressed separately from other drugs.

The Commission shall report to the 2010 Session of the 2009 General Assembly.

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1307 A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT POSSESSION OF CERTAIN PRESCRIPTION DRUGS IS NOT PUNISHABLE AS TRAFFICKING IN OPIUM OR HEROIN AND TO SET OUT THE CRIMINAL PENALTY FOR THAT OFFENSE.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

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

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

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

HOUSE BILL 283

Short Title:	Clarify Broadband Internet Access Definition.	(Public)
Sponsors:	Representatives K. Alexander, Coates, Tillis, Faison (Primary Sponsors); Allred, Bryant, Gulley, Hughes, Johnson, and Lucas.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Public Utilities.	

February 25, 2009

A BILL TO BE ENTITLED

AN ACT CLARIFYING THE DEFINITION OF BROADBAND INTERNET ACCESS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-3(1) reads as rewritten:

"(1) 'Broadband service' means ~~any service that consists of or includes a high-speed access capability to transmit at a rate of not less than 200 kilobits per second in either the upstream or downstream direction and either (i) is used to provide access to the Internet, or (ii) provides computer processing, information storage, information content, or protocol conversion, including any service applications or information service provided over such high-speed access service. "Broadband service" does not include intrastate~~ a connection to the Internet that provides capacity for transmission at an average speed of at least 1.5 megabits per second downstream and at least 384 kilobits per second upstream, regardless of the technology or medium used to provide the connection. The term includes a connection to the Internet provided by wireless technology, copper wire, fiber-optic cable, coaxial cable, broadband over power lines, or other facilities or future technologies. The term does not include any of the following:

a. Value added services in which computer processing applications are used to act on the form, content, code, or protocol of any information transmitted.

b. Value added services providing text, graphic, video, or audio program content for a purpose other than transmission.

c. The transmission of video programming or other programming provided by (or generally considered comparable to programming provided by) a television broadcast station or a radio broadcast station, including cable TV, direct broadcast satellite, and digital television.

d. Interstate service that was tariffed by the Commission and in effect as of the effective date of this subdivision."

SECTION 2. G.S. 143B-437.45(4) reads as rewritten:

"(4) High-speed broadband Internet access. – Internet access with transmission speeds ~~that are consistent with requirements for high-speed broadband Internet access as defined by the Federal Communications Commission from time to time.~~ at an average speed of at least 1.5 megabits per second

downstream and at least 384 kilobits per second upstream, regardless of the technology or medium used to provide the connection. The term includes a connection to the Internet provided by wireless technology, copper wire, fiber-optic cable, coaxial cable, broadband over power lines; or other facilities or future technologies. The term does not include any of the following:

a. Value added services in which computer processing applications are used to act on the form, content, code, or protocol of any information transmitted.

b. Value added services providing text, graphic, video, or audio program content for a purpose other than transmission.

c. The transmission of video programming or other programming provided by (or generally considered comparable to programming provided by) a television broadcast station or a radio broadcast station, including cable TV, direct broadcast satellite, and digital television."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 283
PROPOSED COMMITTEE SUBSTITUTE H283-CSRV-36 [v.1]

5/11/2009 12:08:58 PM

Short Title: Clarify Broadband Internet Access Definition. (Public)

Sponsors:

Referred to:

February 25, 2009

A BILL TO BE ENTITLED

AN ACT CREATING THE NORTH CAROLINA BROADBAND TASK FORCE, TO FOCUS ON EXPANDING BROADBAND ACCESS AND USAGE IN NORTH CAROLINA.

WHEREAS deploying broadband networks and advanced communication services throughout North Carolina will enable continued improvements in healthcare, public safety, education, and the economy; and

WHEREAS, a technology-neutral approach to removing barriers to broadband deployment will encourage lower prices and creation of more consumer choices; and

WHEREAS, advanced communication services have become central to the financial health of our State, as these services have increased individual worker productivity and connected North Carolina businesses to broader markets; and

WHEREAS, State action is needed to continue investment in, stimulate adoption of, and remove further barriers to the development of world-class broadband networks; and

WHEREAS, it is a legislative priority to promote widespread access to, adoption of, and new applications for broadband networks and advanced communication services; and

WHEREAS, it is the State's policy to encourage expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled citizens; and

WHEREAS, the increased State use of broadband networks and advanced communication services will enhance government operations through telemedicine for healthcare, distance learning for education, and better coordination in the areas of public safety; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 21. North Carolina Broadband Task Force

"**§ 143B-472.115. North Carolina Broadband Task Force creation; purpose.**

There is created the North Carolina Broadband Task Force in the Department of Commerce. The Task Force will bring together public and private stakeholders to remove barriers to broadband access, identify opportunities for increased broadband adoption, and enable the creation and deployment of new advanced communication technologies. Membership shall include representatives from State and local government entities having a role in infrastructure deployment, information technology, and economic development;

representatives from the State's private sector technology and telecommunication industries; and representatives of non-profit organizations.

"**§ 143B-472.116. North Carolina Broadband Task Force; membership; meetings.**

(a) The Task Force shall consist of thirty-one members. The Secretary of Commerce shall serve as Co-Chair of the Task Force. The North Carolina Broadband Task Force shall select a non-legislative member of the Task Force to serve as Co-Chair of the Task Force. The State Chief Information Officer, the Chair of the N.C. Utilities Commission, the President of the Microelectronics Center of North Carolina(MCNC), the Executive Director of the e-NC Authority, the President of the University of North Carolina, the President of the North Carolina Community College System, the Chairman and Chief Executive Officer of the State Board of Education, the President of the Golden LEAF Foundation, the Executive Director of the N.C. League of Municipalities, the Executive Director of the N.C. Association of County Commissioners, the President of the N.C. Rural Economic Development Center, the President of the North Carolina Institute of Minority Economic Development or their designees, shall be members of the Task Force. Appointments to the Task Force shall be made as follows:

(1) Nine members appointed by the President Pro Tempore of the Senate, as follows:
   a. Four members of the Senate.
   b. Five representatives from the State's private sector technology, telecommunication and cable industries.

(2) Nine members appointed by the Speaker of the House of Representatives, as follows:
   a. Four members of the House of Representatives.
   b. Five representatives from the State's private sector technology, telecommunication and cable industries.

(b) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall make their appointments to the Task Force not later than 30 days after the adjournment of the 2009 General Assembly, Regular Session 2009. Members of the Task Force shall serve for two-year terms. A vacancy on the Task Force shall be filled by the original appointing authority, using the criteria set out in this section for the original appointment.

(c) All members of the Task Force shall be voting members. Members of the Task Force shall receive travel and subsistence expenses in accordance with the provisions of G.S. 120-3.1, G.S. 138-5, and G.S. 138-6. The Department of Commerce shall provide staff to the Task Force at the request of the Task Force.

(d) The Task Force shall meet at least quarterly or more frequently at the call of the Chair. A quorum shall be a majority of the members present and voting.

"**§ 143B-472.117. North Carolina Broadband Task Force; duties.**

(a) The North Carolina Broadband Task Force shall pay particular attention to how broadband can be used to substantially benefit educational institutions, healthcare institutions, community-based organizations, and governmental institutions. It shall coordinate statewide and regional efforts with public and private stakeholders to obtain and maximize grant and loan funding available for broadband deployment and development projects in the State. Discussions with private sector stakeholders shall identify further opportunities for increasing investment in state-of-the-art technologies.

(b) By December 31, 2009, the Task Force shall provide a preliminary report to the President Pro Tempore of the Senate, the Speaker of the House of Representative, and the Joint Legislative Oversight Committee on Information Technology that identifies administrative actions that can result in immediate promotion of broadband access and usage within the State.

(c) By June 30, 2010 the Task Force shall provide a comprehensive report to the President Pro Tempore of the Senate, the Speaker of the House of Representative, and the Joint Legislative Oversight Committee on Information Technology. The report shall make specific

recommendations as to how North Carolina can take advantage of opportunities for and eliminate any related barriers to broadband access and adoption.

(d) Beginning January 1, 2011 and annually thereafter, the Task Force shall submit annual reports to the General Assembly on or before the convening of the regular session of the General Assembly each year. The Task Force may submit interim reports at any time it deems appropriate.

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 283 DATE 5-10-09

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

COMMITTEE SUBSTITUTE H283-CSRV-36

Rep.) Bryant
)
Sen.)

moves to amend the bill on page 2, line 4

( ) WHICH CHANGES THE TITLE

by deleting "thirty-one" and substituting "thirty-five" and on page 2, lines 20-21 again between lines 25-26 by adding the following:

"c. Two representatives from consumer advocacy groups that ~~have~~ focus on broadband issues."

And page 2, lines 16 & 21 by deleting "Nine" and substituting "Eleven"

SIGNED Angela R. Bryant

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. H 283 - CSRV-36[v.1] DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Robert Tolson
Sen.)

1 moves to amend the bill on page 2, line 4

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "Commerce" and inserting "Commerce, or the Secretary's

4 designee,"

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SIGNED Robert P. Tolson

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 283 A BILL TO BE ENTITLED AN ACT CLARIFYING THE DEFINITION OF BROADBAND INTERNET ACCESS IN NORTH CAROLINA.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on PUBLIC UTILITIES.

(FOR JOURNAL USE ONLY)

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

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

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HOUSE BILL 1299

Short Title:	Virtual Visitation/Family Law.	(Public)
Sponsors:	Representatives Rapp, M. Alexander, Glazier (Primary Sponsors); Dickson, Fisher, and Lucas.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary I.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS PERTAINING TO CUSTODY OF A MINOR CHILD BY DEFINING VISITATION TO INCLUDE VISITATION BY ELECTRONIC COMMUNICATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.2 is amended by adding a new subsection to read:

"(e) An order for custody of a minor child may provide for visitation rights by electronic communication. In granting visitation by electronic communication, the court shall consider the following:

(1) Whether electronic communication is in the best interest of the minor child.

(2) Whether equipment to communicate by electronic means is available, accessible, and affordable to the parents of the minor child.

(3) Any other factor the court deems appropriate in determining whether to grant visitation by electronic communication.

The court may set guidelines for electronic communication, including the hours in which the communication may be made, the allocation of costs between the parents in implementing electronic communication with the child, and the furnishing of access information between parents necessary to facilitate electronic communication. Electronic communication with a minor child may be used to supplement visitation with the child. Electronic communication may not be used as a replacement or substitution for custody or visitation. The amount of time electronic communication is used shall not be a factor in calculating child support or be used to justify or support relocation by the custodial parent out of the immediate area or the State. Any supervised visitation shall include electronic communication between the minor child and the parent subject to supervised visitation. As used in this subsection, 'electronic communication' means contact, other than face-to-face contact, facilitated by electronic means, such as by telephone, electronic mail, instant messaging, video teleconferencing, wired or wireless technologies by Internet, or other medium of communication."

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

HOUSE BILL 1299:
Virtual Visitation/Family Law

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	April 28, 2009
Introduced by:	Reps. Rapp, M. Alexander, Glazier	**Prepared by:**	Tim Hovis Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1299 adds a new subsection to G.S. 50-13.2, Who entitled to custody; terms of custody; visitation rights of grandparents; taking child out of state, to provide for visitation rights by electronic communication.***

G.S. 50-13.2 is set forth at the end of this summary.

BILL ANALYSIS: House Bill 1299 would provide for visitation rights by electronic communication. Electronic communication is defined under the bill as contact other than face-to-face contact, facilitated by electronic means including telephone, e-mail, instant messaging, video teleconferencing, wired or wireless Internet technologies or other mediums.

In granting visitation, the court shall consider the following:

- Whether electronic communication is in the best interest of the child.
- Whether the necessary equipment is available and affordable to the parents of the child.
- Any other appropriate factors.

The bill authorizes the court to set guidelines, including the hours in which the communication is made, the allocation of costs between the parents, and the furnishing of access information between the parents. Electronic communication may be sued to supplement regular visitation, but may not be used as a replacement for custody or visitation or to justify relocation by a custodial parent out of the area. Electronic communication shall also not be a factor in calculating child support. Supervised visitation shall include electronic communication.

EFFECTIVE DATE: House Bill 1299 is effective when it becomes law.

§ 50-13.2. Who entitled to custody; terms of custody; visitation rights of grandparents; taking child out of State.

(a) An order for custody of a minor child entered pursuant to this section shall award the custody of such child to such person, agency, organization or institution as will best promote the interest and welfare of the child. In making the determination, the court shall consider all relevant factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party and shall make findings accordingly. An order for custody must include findings of fact which support the determination of what is in the best interest of the child. Between the mother and father, whether natural or adoptive, no presumption shall apply as to who will better promote the interest and welfare of the child. Joint custody to the parents shall be considered upon the request of either parent.

(b) An order for custody of a minor child may grant joint custody to the parents, exclusive custody to one person, agency, organization, or institution, or grant custody to two or more persons, agencies, organizations, or institutions. Any order for custody shall include such terms, including visitation, as will best promote the interest and welfare of the child. If the court finds that domestic violence has occurred, the court shall enter such orders that best protect the children and party who were the victims of domestic violence, in accordance with the provisions of G.S. 50B-3(a1)(1), (2), and (3). If a party is absent or relocates with or without the children because of an act of domestic violence, the absence or relocation shall not be a factor that weighs against the party in

determining custody or visitation. Absent an order of the court to the contrary, each parent shall have equal access to the records of the minor child involving the health, education, and welfare of the child.

(b1) An order for custody of a minor child may provide visitation rights for any grandparent of the child as the court, in its discretion, deems appropriate. As used in this subsection, "grandparent" includes a biological grandparent of a child adopted by a stepparent or a relative of the child where a substantial relationship exists between the grandparent and the child. Under no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights.

(c) An order for custody of a minor child may provide for such child to be taken outside of the State, but if the order contemplates the return of the child to this State, the judge may require the person, agency, organization or institution having custody out of this State to give bond or other security conditioned upon the return of the child to this State in accordance with the order of the court.

(d) If, within a reasonable time, one parent fails to consent to adoption pursuant to Chapter 48 of the General Statutes or parental rights have not been terminated, the consent of the other consenting parent shall not be effective in an action for custody of the child.

H1299-SMRG-22(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1299

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

H1299-ARG-15 [v.1]

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

Date 5/11/ ,2009

Representative Stevens

moves to amend the bill on page 1, lines 22-24,
by deleting the following: "Any supervised visitation shall include electronic communication between the minor child and the parent subject to supervised visitation." and substituting the following: "Electronic communication between the minor child and the parent may be subject to supervision as ordered by the court.".

SIGNED Sarah Stevens
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1299 A BILL TO BE ENTITLED AN ACT AMENDING THE LAWS PERTAINING TO CUSTODY OF A MINOR CHILD BY DEFINING VISITATION TO INCLUDE VISITATION BY ELECTRONIC COMMUNICATION.

☒ With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

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

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

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_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1447
Committee Substitute Favorable 5/7/09

Short Title: Crime Stoppers Tips Are Confidential. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE IDENTITY OF AN INDIVIDUAL WHO PROVIDES A TIP FOR AN UNSOLVED CASE THROUGH CRIME STOPPERS OR SIMILAR ORGANIZATIONS IS NOT A PUBLIC RECORD, TO PROVIDE THAT THE COMMUNICATION RECEIVED BY A CRIME STOPPERS ORGANIZATION IS NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN A COURT PROCEEDING, AND TO PROVIDE THAT A LAW ENFORCEMENT AGENCY HAS A DUTY TO MAINTAIN THE CONFIDENTIALITY OF A CRIME STOPPERS TIP.

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 47.

"Local Crime Stoppers Programs.

"**§ 15A-850. Local Crime Stoppers organizations; confidentiality.**

(a) Definition. – As used in this section, a "Crime Stoppers" organization or other similarly named organization means a private, nonprofit North Carolina corporation governed by a civilian volunteer board of directors that is operated on a local or statewide level that (i) offers anonymity to persons providing information to the organization, (ii) accepts and expends donations for cash rewards to persons who report to the organization information about alleged criminal activity and that the organization forwards to the appropriate law enforcement agency, and (iii) is established as a cooperative alliance among the news media, the community, and law enforcement officials.

(b) Confidentiality of Crime Stoppers Tips. – Evidence of a communication or any information contained therein between a person submitting a report of an alleged criminal act to a Crime Stoppers organization and the person who accepted the report on behalf of the organization is not subject to discovery or admissible in any court proceeding, regardless of the means by which a communication is received.

(c) Identity of Crime Stoppers Informant Is Not Public Record; Duty of Law Enforcement Agency to Maintain Confidentiality. – The identity of any individual providing information about a crime or criminal activity to a Crime Stoppers organization under a promise of anonymity is not a public record as defined by G.S. 132-1 and shall not be disclosed. A law enforcement agency receiving information concerning alleged criminal activity from a Crime Stoppers organization shall maintain confidentiality pursuant to this section and pursuant to G.S. 132-1.4(h)."

SECTION 2. This act becomes effective December 1, 2009.

HOUSE BILL 1447:
Crime Stoppers Tips Are Confidential

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	May 10, 2009
Introduced by:	Rep. Wiley	**Prepared by:**	Susan Sitze* Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 1447 would ensure confidentiality for individuals who provide tips to Crime Stoppers organizations in the following ways:***

- ***Provides a statutory definition for "Crime Stoppers" organization***
- ***Provides that evidence of the communication of a tip and any information contained in the tip is not subject to discovery or admissible in a court proceeding***
- ***Provides that the identity of a person providing a tip is not a public record***
- ***Requires law enforcement agencies that receive tips from "Crime Stoppers" to maintain confidentiality***

CURRENT LAW AND BACKGROUND: There is currently no statute in North Carolina that provides confidentiality for individuals who provide tips to Crime Stopper organizations under a promise of anonymity. The purpose of Crime Stopper organizations is to provide an identity-protected means of reporting information regarding a crime that rewards citizens whose tips result in an arrest. When a person provides information they are given a coded number to protect their identity.

North Carolina Crime Stoppers organizations have increasingly been dealing with defense attorneys who attempt to gain access to tips and tip sheets through the discovery process. Under G.S. 15A-908, upon written motion of a party and a finding of good cause, a court is authorized to order that discovery be denied, restricted, or deferred. However, getting these protective orders requires each of the 93 programs to file motions in their various jurisdictions for protective orders in order to maintain their promise of anonymity.

BILL ANALYSIS: House Bill 1447 would provide confidentiality for individuals providing tips to Crime Stoppers organizations.

Definition of "Crime Stoppers" organization. The bill defines "Crime Stoppers" organization as a private, nonprofit NC corporation governed by a civilian volunteer board of directors and operated on a local or statewide level that:

- Offers anonymity to those providing tips
- Takes donations to provide cash rewards to those providing tips, which the organization forwards to law enforcement
- Is established as a cooperative alliance between the media, the community, and law enforcement

Confidentiality of the tip. The bill would provide that any evidence of a communication or any information contained in a communication between a person submitting a report on an alleged criminal act to a Crime Stoppers organization and the person receiving the report is not subject to discovery or admissible in any court proceeding.

Identity of person giving tip not public record. The bill would provide that the identity of any individual who provides information about a crime to a Crime Stoppers organization under a promise of anonymity is not a public record and shall not be disclosed.

Law enforcement to maintain confidentiality. The bill would require a law enforcement agency to maintain the confidentiality provided in this act when it receives information about alleged criminal activity from a Crime Stoppers organization.

EFFECTIVE DATE: The act would become effective December 1, 2009.

H1447-SMSA-81(e2) v1

**Wendy Graf Ray, Staff Attorney, contributed substantially to this summary.*

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

HB 1447 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE IDENTITY OF AN INDIVIDUAL WHO PROVIDES A TIP FOR AN UNSOLVED CASE THROUGH CRIME STOPPERS OR SIMILAR ORGANIZATIONS IS NOT A PUBLIC RECORD, TO PROVIDE THAT THE COMMUNICATION RECEIVED BY A CRIME STOPPERS ORGANIZATION IS NOT SUBJECT TO DISCOVERY OR ADMISSIBLE IN A COURT PROCEEDING, AND TO PROVIDE THAT A LAW ENFORCEMENT AGENCY HAS A DUTY TO MAINTAIN THE CONFIDENTIALITY OF A CRIME STOPPERS TIP.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

HOUSE BILL 1213:
Amend Broadband Definition/More Competition

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Public Utilities	**Date:**	May 6, 2009
Introduced by:	Rep. Brubaker	**Prepared by:**	Heather Fennell Committee Counsel
Analysis of:	PCS to First Edition H1213-CSLR-10		

SUMMARY: The proposed committee substitute to House Bill 1213 clarifies the authority of entities concerning intercarrier compensation and amends the definition of broadband service.

CURRENT LAW: G.S. 62-2(b1) provides that the Utilities Commission cannot regulate broadband service.

An incumbent local exchange carrier generally owns the switched network in the area in which it offers service. Competing local exchange providers obtain access to the switched network by paying the LEC intercarrier compensation rates. The Utilities Commission regulates these rates for intrastate calls, and the Federal Communications Commission oversees the rates for interstate calls.

The term "broadband service" is defined in Chapter 62 of the General Statutes.

BILL ANALYSIS:

Section 1: Clarifies that although the Utilities Commission does not have jurisdiction over broadband service nothing impedes the authority of any entity to enforce State and federal laws concerning intercarrier compensation rates.

Section 2: Amends the definition of "broadband service" to include "any service that enables an end user to send to receive communications in Internet protocol or a successor protocol."

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

H1213-SMTD-49(CSLR-10) v2

HOUSE BILL 1213

Short Title:	Amend Broadband Definition/More Competition.	(Public)
Sponsors:	Representative Brubaker.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Public Utilities.	

April 8, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE DEFINITION OF BROADBAND SERVICE TO ENCOURAGE DEPLOYMENT OF COMPETITIVE INTERNET PROTOCOL-ENABLED SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-3(1) reads as rewritten:

"(1) "Broadband service" means any service that consists of or includes a high-speed access capability to transmit at a rate of not less than 200 kilobits per second in either the upstream or downstream direction and either (i) is used to provide access to the Internet, or (ii) provides computer processing, information storage, information content, or protocol conversion, including any service applications or information service provided over such high-speed access service. <u>"Broadband service" includes any service that enables the end user to send or receive communications in Internet protocol or a successor protocol.</u> "Broadband service" does not include intrastate service that was tariffed by the Commission and in effect as of the effective date of this subdivision."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1213
PROPOSED COMMITTEE SUBSTITUTE H1213-CSRV-34 [v.3]

5/11/2009 12:59:31 PM

Short Title: Amend Broadband Definition/More Competition. (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF BROADBAND SERVICE AND TO PROVIDE THAT THE CONSUMER COMPLAINT PROCEDURE OVERSEEN BY THE PUBLIC STAFF OF THE UTILITIES COMMISSION IS NOT REGULATION UNDER CHAPTER 62.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 62-2(b1) reads as rewritten;

"(b1) Broadband service provided by public utilities as defined in G.S. 62-3(23)a.6. is sufficiently competitive and shall not be regulated by the Commission. The complaint procedure provided under G.S. 62-73.1 is not considered regulation under this subsection. Nothing herein shall be construed to (i) modify the authority of any entity to enforce applicable State or federal statutes or regulations relating to switched access rates or other intercarrier compensation rates for interexchange services provided by a local exchange telecommunications company or (ii) modify any authority of the State or a political subdivision thereof with respect to cable services consistent with Title VI of the Communications Act of 1934 (47 United States Code Section 521, et seq) and with Article 42 of Chapter 66 of the General Statutes."

SECTION 2. G.S. 62-3(1) reads as rewritten:

"(1) "Broadband service" ~~means any service that consists of or includes a high-speed access capability to transmit at a rate of not less than 200 kilobits per second in either the upstream or downstream direction and either (i) is used to provide access to the Internet, or (ii) provides computer processing, information storage, information content, or protocol conversion, including any service applications or information service provided over such high-speed access service.~~ shall have the same definition as the most current definition adopted by the Federal Communications Commission (FCC) in its rules and regulations. Unless otherwise defined by the FCC, "broadband service" shall not include any service that enables the end user to send or receive communications in Internet protocol or a successor protocol including, but not limited to, Voice-over-Internet protocol. "Broadband service" does not include intrastate service that was tariffed by the Commission and in effect as of the effective date of this subdivision. For the purposes of Chapter 105 of the General Statutes and Article 42 of Chapter 66 of the General Statutes, "broadband service" does not include any cable

service or video programming that is sent or received in Internet protocol or a successor protocol or any other transmission mode."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1213 A BILL TO BE ENTITLED AN ACT AMENDING THE DEFINITION OF BROADBAND SERVICE TO ENCOURAGE DEPLOYMENT OF COMPETITIVE INTERNET PROTOCOL-ENABLED SERVICES.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on PUBLIC UTILITIES.

(FOR JOURNAL USE ONLY)

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VISITOR REGISTRATION SHEET

Ways & Means — 6.3.2009

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
V-Bishop William Collins	ENCEU
Kerla Allen	CDPL
Neil Mohlman	Raleigh NC
Grant Gross	Raleigh NC
Scott Barn	Raleigh, NC
Jim Woodall	DA 15B
Tracey Cline	DA 14th
Emily Kirby	Governor's Office
Sarah Preston	ACLU-NC
Christopher Hill	ACLU Cap. Tal Punishment Project

VISITOR REGISTRATION SHEET

Ways & Means — 6/3/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elisha Schilling	self
Ethan Schilling	self
Tom ~~LARRY~~	REP PARMON
Sandy Barnes	Sen. D. Berger
Tarah Callahan-Ledford	NCCM
William Durham	Fair Trial Initiative
Emilie Haertsch	PFADP
Amanda Lattanzio	People of Faith Against the Death Penalty
Stephen Dear	" "
Kevin Kley	N+O

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 481
Judiciary II Committee Substitute Adopted 4/15/09

Short Title: Trustee's Power to Appoint to Other Trust. (Public)

Sponsors:

Referred to:

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW A TRUSTEE TO APPOINT TRUST PROPERTY TO ANOTHER TRUST FOR THE SAME BENEFICIARY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-8-816.1. Trustee's special power to appoint to another trust.**

(a) A trustee who has the discretionary power under the terms of an irrevocable trust instrument to distribute principal or income of the trust (the 'first trust') to or for the benefit of one or more beneficiaries of the trust, whether or not there is a current need to distribute principal or income under any standard provided in the trust instrument, may instead, without authorization by the court, exercise the power by appointing all or part of the principal or income subject to the power in favor of a trustee of another trust (the 'second trust') for the current benefit of one or more of the beneficiaries under the same trust instrument or under a different trust instrument which may be created by the trustee.

(b) The terms of the second trust shall be subject to the following:

(1) The beneficiaries of the second trust may include only beneficiaries of the first trust.

(2) A beneficiary who has only a future beneficial interest, vested or contingent, in the first trust cannot have the future beneficial interest accelerated to a present interest in the second trust.

(3) The second trust may not reduce any fixed income, annuity, or unitrust interest in the assets of the first trust.

(4) If any contribution to the first trust qualified for a marital or charitable deduction for federal income, gift, or estate tax purposes under the Internal Revenue Code, then the second trust shall not contain any provision that, if included in the first trust, would have prevented the first trust from qualifying for the deduction or that would have reduced the amount of the deduction.

(5) If contributions to the first trust have been excluded from the gift tax by the application of section 2503(b) and section 2503(c) of the Internal Revenue Code, then the second trust shall provide that the beneficiary's remainder interest in the contributions shall vest and become distributable no later than the date upon which the interest would have vested and become distributable under the terms of the first trust.

(6) If one or more beneficiaries of the first trust has a power of withdrawal over trust property, then either:

a. The second trust must provide a power of withdrawal in the second trust identical to the power of withdrawal in the first trust; or

b. Sufficient trust property must remain in the first trust to satisfy the outstanding power of withdrawal.

(7) If the power to distribute principal or income in the first trust is subject to an ascertainable standard, then the terms of the second trust shall be subject to all of the following:

a. The power to distribute principal or income in the second trust must be subject to the same ascertainable standard; and

b. The second trust may not confer a power of appointment upon any person other than a power of appointment conferred upon that person under the original trust; and

c. The beneficiaries of the first trust must have the same beneficial interests in the second trust.

(8) If the power to distribute principal or income in the first trust is not subject to an ascertainable standard, then the second trust may confer a power of appointment upon a beneficiary of the first trust to whom or for the benefit of whom the trustee has the power to distribute principal or income of the first trust. The permissible appointees of the power of appointment conferred upon a beneficiary may include persons who are not beneficiaries of the first or second trust. The power of appointment conferred upon a beneficiary shall be subject to the provisions of G.S. 41-23 covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienation of the first trust.

(c) A trustee may not exercise the power to appoint principal or income under subsection (a) of this section if the trustee is a beneficiary of the first trust, but the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(d) The exercise of the power to appoint principal or income under subsection (a) of this section:

(1) Shall be considered the exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate; and

(2) Shall be subject to the provisions of G.S. 41-23 covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienation of the first trust; and

(3) Is not prohibited by a spendthrift provision or by a provision in the trust instrument that prohibits amendment or revocation of the trust.

(e) To effect the exercise of the power to appoint principal or income under subsection (a) of this section the following shall apply:

(1) The exercise of the power to appoint shall be made by an instrument in writing, signed and acknowledged by the trustee, setting forth the manner of the exercise of the power, including the terms of the second trust, and the effective date of the exercise of the power. The instrument shall be filed with the records of the first trust.

(2) The trustee shall give written notice to all qualified beneficiaries of the first trust, at least 60 days prior to the effective date of the exercise of the power to appoint, of the trustee's intention to exercise the power. The notice shall

include a copy of the instrument described in subdivision (1) of this subsection.

(3) If all qualified beneficiaries waive the notice period by a signed written instrument delivered to the trustee, the trustee's power to appoint principal or income shall be exercisable after notice is waived by all qualified beneficiaries, notwithstanding the effective date of the exercise of the power.

(4) The trustee's notice under this subsection shall not limit the right of any beneficiary to object to the exercise of the trustee's power to appoint and bring an action for breach of trust seeking appropriate relief as provided by G.S. 36C-10-1001.

(f) Nothing in this section shall be construed to create or imply a duty of the trustee to exercise the power to distribute principal or income, and no inference of impropriety shall be made as a result of a trustee not exercising the power to appoint principal or income conferred under subsection (a) of this section. Nothing in this section shall be construed to abridge the right of any trustee who has a power to appoint property in further trust that arises under the terms of the first trust or under any other section of this Chapter or under another provision of law or under common law.

(g) A trustee or beneficiary may commence a proceeding to approve or disapprove a proposed exercise of the trustee's special power to appoint to another trust pursuant to subsection (a) of this section."

SECTION 2. G.S. 36C-2-203(f) is amended by adding a new subdivision to read:

"**§ 36C-2-203. Subject matter jurisdiction.**

...

(f) Without otherwise limiting the jurisdiction of the superior court division of the General Court of Justice, proceedings concerning the internal affairs of trusts shall not include, and, therefore, the clerk of superior court shall not have jurisdiction under subsection (a) of this section of the following:

(1) Actions to reform, terminate, or modify a trust as provided by G.S. 36C-4-410 through G.S. 36C-4-416;

(2) Actions by or against creditors or debtors of a trust;

(3) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence;

(4) Actions to enforce a charitable trust under G.S. 36C-4-405.1; ~~and~~

(5) Actions to amend or reform a charitable trust under ~~G.S. 36C-4A-1~~G.S. 36C-4A-1; and

(6) Actions involving the exercise of the trustee's special power to appoint to another trust pursuant to G.S. 36C-8-816.1."

SECTION 3. This act becomes effective October 1, 2009.

SENATE BILL 481:
Trustee's Power to Appoint to Other Trust

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary II	**Date:**	June 2, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Tim Hovis* Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***Senate Bill 481 would allow a trustee under certain circumstances to appoint trust property into another trust without the approval of a court.***

CURRENT LAW: A trustee may currently seek court approval to appoint trust property into another trust.

BILL ANALYSIS:

Section 1 of Senate Bill 481 amends Chapter 36C (Uniform Trust Code) by creating a new section (G.S. 36C- 8-816.1) that would allow a trustee under certain circumstances to appoint trust property into another trust without the approval of a court. The restrictions on the ability to appoint from one trust to another would be:

- A trustee must have discretionary power to distribute principal and income before the trustee can use this power to appoint.
- The beneficiaries of the second trust (the one the assets are being appointed to) may only include beneficiaries of the first trust.
- A beneficiary who has only a future beneficial interest, vested or contingent, in the first trust cannot have that interest accelerated to a present interest in the second trust.
- The second trust may not reduce any fixed income, annuity, or unitrust interest in the assets of the first trust.
- Any assets in the first trust subject to a federal marital or charitable deduction cannot be appointed to a second trust if the effect would be to lose the deduction.
- A minor's remainder interest in a 2503(c) trust cannot be changed in the second trust.
- If a beneficiary of the first trust has a power of withdrawal over trust property, then the second trust must provide an identical power of withdrawal or sufficient property must remain in the first trust to satisfy the outstanding power of withdrawal.
- If the power to distribute principal or income in the first trust is subject to an ascertainable standard, the power must be subject to the same standard in the second trust. Additionally, the second trust may not confer a power of appointment upon any person other than a power of appointment conferred under the original trust and the beneficiaries of the first trust must have the same beneficial interests in the second trust.
- If the power to distribute principal or income in the first trust is not subject to an ascertainable standard, the second trust may confer a power of appointment upon a beneficiary of the first trust. The power of appointment conferred shall be subject to the rule against perpetuities applicable to the first trust.

In addition to these restrictions, exercise of the power of appointment must be made in a written instrument, signed and acknowledged by the trustee and filed with the records of the first trust. The trustee must give the qualified beneficiaries 60 days written notice before exercising the power. This notice requirement may be waived by all qualified beneficiaries. A beneficiary who objects to the trustee's exercise of this power of appointment may seek appropriate relief from the court under G.S. 36C-10-1001.

Any exercise of the power of appointment by a trustee under this section would be subject to the trustee's fiduciary duties.

Section 2 amends G.S. 36C-2-203(f) to prohibit clerks of superior court from having jurisdiction over actions involving a trustee's exercise of the power of appointment authorized under G.S. 36C-8-816.1.

EFFECTIVE DATE: The act would become October 1, 2009 and would apply to new and existing trusts.

***This summary was substantially contributed to by Kory Goldsmith, Staff Attorney.**

S481-SMRG-62(e2) v3

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 481 A BILL TO BE ENTITLED AN ACT TO ALLOW A TRUSTEE TO APPOINT TRUST PROPERTY TO ANOTHER TRUST FOR THE SAME BENEFICIARY.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 482
Judiciary II Committee Substitute Adopted 4/15/09

Short Title: Clarifications to Trust Code. (Public)

Sponsors:

Referred to:

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A PERMISSIBLE APPOINTEE UNDER A POWER OF APPOINTMENT IS NOT A TRUST BENEFICIARY, AND TO CLARIFY THAT A LOAN OR PLEDGE BY A TRUSTEE MAY BE MADE IN CONNECTION WITH A LOAN OF THE TRUSTEE'S OWN FUNDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 36C-1-103(3) reads as rewritten:

"**§ 36C-1-103. Definitions.**

The following definitions apply in this Chapter:

...

(3) Beneficiary. – A person who:

a. Has a present or future beneficial interest in a trust, vested or contingent, including the owner of an interest by assignment or ~~transfer;~~transfer, but excluding a permissible appointee of a power of appointment; or

b. In a capacity other than that of trustee, holds a power of appointment over trust property."

SECTION 2. G.S. 36C-3-302 reads as rewritten:

"**§ 36C-3-302. Representation by holder of general testamentary power of appointment.**

The sole holder or all coholders of a power of revocation or a presently exercisable or testamentary general power of appointment, including one in the form of a power of amendment, shall represent and bind other persons to the extent that their interests, as ~~permissible appointees,~~ takers in default, ~~or otherwise,~~ are subject to the power. ~~To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.~~"

SECTION 3. Subdivisions (19), (19a), (19b), and (19c) of G.S. 36C-8-816 read as rewritten:

"**§ 36C-8-816. Specific powers of trustee.**

Without limiting the authority conferred by G.S. 36C-8-815, a trustee may:

...

(19) Pledge trust property to guarantee loans made ~~by others~~ to any beneficiary;

(19a) Guarantee loans made ~~by others~~ to any beneficiary;

(19b) Pledge trust property to guarantee loans made ~~by others~~ to any proprietorship, partnership, limited liability company, business trust,

corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest.

(19c) Guarantee loans made ~~by others~~ to ~~a~~ any proprietorship, partnership, limited liability company, business trust, corporation, venture, agricultural operation, or other form of business or enterprise in which the trust or any beneficiary has an ownership interest."

SECTION 4. This act becomes effective October 1, 2009.

SENATE BILL 482:
Clarifications to Trust Code

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary II	**Date:**	June 2, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Tim Hovis* Committee Counsel
Analysis of:	Second Edition		

SUMMARY: Senate Bill 482 amends the definition of "beneficiary" of a trust to clarify that it does not include an appointee under a power of appointment and make other conforming changes.

CURRENT LAW: G.S. 36C-1-103(3) defines a beneficiary of a trust as (1) a person who has a present or future beneficial interest in a trust, whether vested or contingent, or (2) holds a power of appointment over trust property, but in a capacity other than as a trustee. The definition would appear to include as a beneficiary a *potential* appointee under a power of appointment. These potential appointees (as beneficiaries) would be entitled to notice and representation in proceedings related to the trust.

BILL ANALYSIS:

Section 1 amends the definition of a "beneficiary" of a trust to clarify that it does not include permissible appointees under a power of appointment. An appointee under those conditions has an expectancy to become a beneficiary, but until the appointment is made, does not have any vested rights under the trust.

Section 2 amends G.S. 36C-3-302 to delete the reference to permissible appointees as persons entitled to notice and representation in proceedings related to the trust. This amendment is consistent with the change in G.S. 36C-1-103(3) regarding the definition of a beneficiary of a trust.

Section 3 amends G.S. 36C-8-816(19), (19a), (19b) and (19c) to allow a trustee to make and or guarantee loans to a beneficiary or related to trust property.

EFFECTIVE DATE: The act would become effective October 1, 2009.

*This summary was substantially contributed to by Kory Goldsmith, Staff Attorney.

S482-SMRG-63(e2) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 482 A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT A PERMISSIBLE APPOINTEE UNDER A POWER OF APPOINTMENT IS NOT A TRUST BENEFICIARY, AND TO CLARIFY THAT A LOAN OR PLEDGE BY A TRUSTEE MAY BE MADE IN CONNECTION WITH A LOAN OF THE TRUSTEE'S OWN FUNDS.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 483

Short Title:	Clarify Judicial Creation of Trust.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT COURTS IN NORTH CAROLINA HAVE THE AUTHORITY TO CREATE TRUSTS BY JUDICIAL ORDER OR JUDGMENT IN CASES PROPERLY BEFORE THE COURT; AND TO SPECIFICALLY PROVIDE THAT NORTH CAROLINA COURTS HAVE THE RIGHT TO CREATE TRUSTS PURSUANT TO 42 U.S.C. § 1396P(D)(4)(A).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 36C-2-203(a)(9) reads as rewritten:

"**§ 36C-2-203. Subject matter jurisdiction.**

(a) The clerks of superior court of this State have original jurisdiction over all proceedings concerning the internal affairs of trusts. Except as provided in subdivision (9) of this subsection, the clerk of superior court's jurisdiction is exclusive. Proceedings concerning the internal affairs of the trust are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and trust beneficiaries, to the extent that those matters are not otherwise provided for in the governing instrument. These include proceedings:

...

(9) To ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments, <u>to create a trust,</u> and to determine the existence or nonexistence of trusts created other than by will and the existence or nonexistence of any immunity, power, privilege, duty, or right. Any party may file a notice of transfer of a proceeding pursuant to this subdivision to the superior court division of the General Court of Justice as provided in G.S. 36C-2-205(g1). In the absence of a transfer to Superior Court, Article 26 of Chapter 1 of the General Statutes shall apply to a trust proceeding pending before the clerk of superior court to the extent consistent with this Article.

SECTION 2. G.S. 36C-4-401 reads as rewritten:

"**§ 36C-4-401. Methods of creating trust.**

A trust may be created by any of the following methods:

(1) Transfer of property by a settlor to a person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death including either of the following:

a. The devise or bequest to the trustee of the trust as provided in G.S. 31-47.

b. The designation of the trust as beneficiary of life insurance or other death benefits as provided in G.S. 36C-4-401.1.

(2) Declaration by the owner of property that the owner holds identifiable property as trustee unless the transfer of title of that property is otherwise required by law.

(3) Exercise of a power of appointment in favor of a trustee.

(4) A court by judgment, order, or decree, including the establishment of a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code."

SECTION 3. Article 4 of Chapter 36C of the General Statutes is amended by adding a new section to read:

"**§ 36C-4-401.2. Trust pursuant to 46 U.S.C. § 1396p(d)(4).**

Any interested party may petition the court, in accordance with the provisions of this Chapter, to establish a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code. This section is not the exclusive method of establishing a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code; and the court shall maintain its authority to create or establish any trust, including a trust pursuant to section 1396p(d)(4) of Title 42 of the United States Code, by means of judgment, order, or decree in any matter properly before the court."

SECTION 4. This act becomes effective October 1, 2009.

SENATE BILL 483:
Clarify Judicial Creation of Trust

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	June 3, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Susan Sitze* Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 483 provides statutory authorization for a court to create a trust for Medicaid purposes under section 1396d(4) of Title 42 of the U.S. Code. The authorization is not the exclusive method for a court to create this or any other type of trust.***

CURRENT LAW: A court may establish a trust by judgment, order or decree. G.S. 36C-2-203(a) provides that the clerks of superior court have original jurisdiction over all proceedings concerning the internal affairs of trusts.

BILL ANALYSIS:

Section 3 amends Article 4 of Chapter 36C to specifically provide that a court may create a trust for Medicaid purposes under Section 1396d(4) of Title 42 of the U.S. Code. The provision is not a limitation on the court's ability to otherwise create a trust under existing law.

Section 1 and 2 make it clear that a court may create a trust by means other than a Medicaid trust under the proposed G.S. 36C-4-401.2.

EFFECTIVE DATE: The act would become October 1, 2009.

S483-SMSA-94(e1) v1

**Kory Goldsmith, Staff Attorney, contributed substantially to this summary.*

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for
SB 483 A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT COURTS IN NORTH CAROLINA HAVE THE AUTHORITY TO CREATE TRUSTS BY JUDICIAL ORDER OR JUDGMENT IN CASES PROPERLY BEFORE THE COURT; AND TO SPECIFICALLY PROVIDE THAT NORTH CAROLINA COURTS HAVE THE RIGHT TO CREATE TRUSTS PURSUANT TO 42 U.S.C. § 1396P(D)(4)(A).

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 3

SENATE BILL 461*
Judiciary I Committee Substitute Adopted 5/12/09
Third Edition Engrossed 5/14/09

Short Title: North Carolina Racial Justice Act. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE FAIR AND RELIABLE IMPOSITION OF CAPITAL SENTENCES, TO ENSURE THAT ASSISTANCE RENDERED BY ANY HEALTH CARE PROFESSIONAL IN THE PROCESS OF A LAWFUL EXECUTION BY THE STATE DOES NOT RESULT IN DISCIPLINARY OR CORRECTIVE ACTION BY ANY STATE AUTHORIZED BOARD OR AUTHORITY, TO EXCLUDE THE ADMINISTRATION OF CONTROLLED SUBSTANCES USED IN AN EXECUTION FROM THE PRACTICE OF MEDICINE, TO REMOVE THE REQUIREMENT THAT THE GOVERNOR AND COUNCIL OF STATE APPROVE THE NECESSARY APPLIANCES AND QUALIFIED PERSONNEL FOR THE INFLICTION OF THE PUNISHMENT OF DEATH, AND TO PROHIBIT THE SECRETARY OF CORRECTION FROM SCHEDULING MORE THAN ONE EXECUTION WITHIN A 30-DAY PERIOD.

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 101.

"North Carolina Racial Justice Act.

"**§ 15A-2010. North Carolina Racial Justice Act.**

No person shall be subject to or given a sentence of death or shall be executed pursuant to any judgment that was sought or obtained on the basis of race.

"**§ 15A-2011. Proof of racial discrimination.**

(a) A finding that race was the basis of the decision to seek or impose a death sentence may be established if the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the judicial division at the time the death sentence was sought or imposed.

(b) Evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the judicial division at the time the death sentence was sought or imposed may include statistical evidence or other evidence, including, but not limited to, sworn testimony of attorneys, prosecutors, law enforcement officers, jurors, or other members of the criminal justice system or both, that irrespective of statutory factors one or more of the following applies:

(1) Death sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race.

(2) Death sentences were sought or imposed significantly more frequently as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race.

(3) Race was a significant factor in decisions to exercise peremptory challenges during jury selection.

A juror's testimony under this subsection shall be consistent with Rule 606(b) of the North Carolina Rules of Evidence, as contained in G.S. 8C-1.

(c) The defendant has the burden of proving that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the judicial division at the time the death sentence was sought or imposed. The State may offer evidence in rebuttal of the claims or evidence of the defendant. The court may consider evidence of any program implemented prior to the defendant's trial for the purpose of eliminating racial disparities in its evaluation of whether the State has adequately addressed those disparities.

"**§ 15A-2012. Hearing procedure.**

(a) The defendant shall state with particularity how the evidence supports a claim that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the judicial division at the time the death sentence was sought or imposed. The claim shall be raised by the defendant at the pretrial conference or in postconviction proceedings. The court shall schedule a hearing on the claim and shall prescribe a time for the submission of evidence by both parties. If the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the judicial division at the time the death sentence was sought or imposed, the court shall order that a death sentence not be sought, or that the death sentence imposed by the judgment shall be vacated and the defendant resentenced to life imprisonment without the possibility of parole.

(b) Notwithstanding any other provision or time limitation contained in Article 89 of Chapter 15A of the General Statutes, a defendant may seek relief from the defendant's death sentence upon the ground that racial considerations played a significant part in the decision to seek or impose a death sentence by filing a motion seeking relief. The motion shall be filed within one year of the effective date of this act.

Except as specifically stated in subsections (a) and (b) of this section, the procedures and hearing on the motion seeking relief from a death sentence upon the ground that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the judicial division at the time the death sentence was sought or imposed, shall follow and comply with G.S. 15A-1420, 15A-1421, and 15A-1422."

SECTION 2. Article 19 of Chapter 15 of the General Statutes is amended by adding a new section to read:

"**§ 15-188.1. Health care professional assistance.**

(a) Any assistance rendered with an execution under this Article by any licensed health care professional, including, but not limited to, physicians, nurses, and pharmacists shall not be cause for any disciplinary or corrective measures by any board, commission, or other authority created by the State or governed by State law which oversees or regulates the practice of health care professionals, including, but not limited to, the North Carolina Medical Board, the North Carolina Board of Nursing, and the North Carolina Board of Pharmacy.

(b) The infliction of the punishment of death by administration of the required lethal substances under this Article shall not be construed to be the practice of medicine."

SECTION 3. G.S. 15-188 reads as rewritten:

"**§ 15-188. Manner and place of execution.**

In accordance with G.S. 15-187, the mode of executing a death sentence must in every case be by administering to the convict or felon a lethal quantity of an ultrashort-acting barbiturate

in combination with a chemical paralytic agent until the convict or felon is dead; and when any person, convict or felon shall be sentenced by any court of the State having competent jurisdiction to be so executed, the punishment shall only be inflicted within a permanent death chamber which the superintendent of the State penitentiary is hereby authorized and directed to provide within the walls of the North Carolina penitentiary at Raleigh, North Carolina. The superintendent of the State penitentiary shall also cause to be provided, in conformity with this ~~Article and approved by the Governor and Council of State,~~Article, the necessary appliances for the infliction of the punishment of death and qualified personnel to set up and prepare the injection, administer the preinjections, insert the IV catheter, and to perform other tasks required for this procedure in accordance with the requirements of this Article."

SECTION 4. G.S. 15-194 reads as rewritten:

"**§ 15-194. Time for execution.**

In sentencing a capital defendant to a death sentence pursuant to G.S. 15A-2000(b), the sentencing judge need not specify the date and time the execution is to be carried out by the Department of Correction. The Secretary of Correction shall immediately schedule a date for the execution of the original death sentence not less than 30 days nor more than 60 days from the date of receiving written notification from the Attorney General of North Carolina or the district attorney who prosecuted the case of any one of the following:

(1) The United States Supreme Court has filed an opinion upholding the sentence of death following completion of the initial State and federal postconviction proceedings, if any;

(2) The mandate issued by the Supreme Court of North Carolina on direct appeal pursuant to N.C.R. App. P. 32(b) affirming the capital defendant's death sentence and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;

(3) The capital defendant, if indigent, failed to timely seek the appointment of counsel pursuant to G.S. 7A-451(c), or failed to file a timely motion for appropriate relief as required by G.S. 15A-1415(a);

(4) The superior court denied the capital defendant's motion for appropriate relief, but the capital defendant failed to file a timely petition for writ of certiorari to the Supreme Court of North Carolina pursuant to N.C.R. App. P. 21(f);

(5) The Supreme Court of North Carolina denied the capital defendant's petition for writ of certiorari pursuant to N.C.R. App. P. 21(f), or, if certiorari was granted, upheld the capital defendant's death sentence, but the capital defendant failed to file a timely petition for writ of certiorari to the United States Supreme Court; or

(6) Following State postconviction proceedings, if any, the capital defendant failed to file a timely petition for writ of habeas corpus in the appropriate federal district court, or failed to timely appeal or petition an adverse habeas corpus decision to the United States Court of Appeals for the Fourth Circuit or the United States Supreme Court.

The Secretary shall not schedule the date for the execution to occur within 30 days of any other scheduled execution. The Secretary shall send a certified copy of the document fixing the date to the clerk of superior court of the county in which the case was tried or, if venue was changed, in which the defendant was indicted. The certified copy shall be recorded in the minutes of the court. The Secretary shall also send certified copies to the capital defendant, the capital defendant's attorney, the district attorney who prosecuted the case, and the Attorney General of North Carolina."

SECTION 5. Section 1 of this act is effective when it becomes law and applies retroactively. The remainder of this act is effective when it becomes law.

SENATE BILL 461:
North Carolina Racial Justice Act

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	June 3, 2009
Introduced by:	Sen. McKissick	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to Third Edition S461-CSRV-46		

SUMMARY: ***This proposed committee substitute for Senate Bill 461 would provide a process by which evidence could be used to establish that race was the basis for seeking or obtaining the death penalty.***

[As introduced, this bill was identical to H472, as introduced by Reps. Womble, Parmon, Luebke, Harrison, which is currently in House Judiciary I.]

BILL ANALYSIS: Senate Bill 461 would enact the North Carolina Racial Justice Act, which would provide a process by which evidence could be used to establish that race was the basis for seeking or obtaining the death penalty. The bill provides that a finding that race was the basis of the decision to seek or impose the death penalty may be established if the court finds that race was a significant factor in decisions to seek or impose the death penalty in the county, the prosecutorial district, the judicial division, or the State at the time the death penalty was sought or imposed. Evidence relevant to establish a finding that race was a significant factor may include statistical or other evidence, including sworn testimony of members of the criminal justice system that:

- the death penalty was sought or imposed significantly more frequently for persons of one race than for persons of another race
- the death penalty was sought or imposed significantly more frequently as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race; or
- that race was a significant factor in decisions to exercise peremptory challenges during jury selection

The defendant would have the burden of proving that race was a significant factor in decisions to seek or impose the death penalty in the county, the prosecutorial district, the judicial division, or the State at the time the death penalty was sought or imposed. The claim could be raised by the defendant at the pretrial conference or in postconviction proceedings, and the court would be required to schedule a hearing on the claim and set a time for the submission of evidence by both parties. If the court finds that race was a significant factor, the court would order that the death penalty not be sought or that a death sentence not be carried out and the defendant resentenced to life imprisonment without parole.

Except as otherwise specified in the bill, the existing provisions of the State's Criminal Procedure Act regarding procedures and hearing on motions for appropriate relief would apply, including the appointment of counsel for indigent defendants and review upon appeal.

EFFECTIVE DATE: The bill would become effective when it becomes law, and would apply retroactively. A defendant on death row would be allowed a period of one year from the effective date of the bill to file a motion seeking relief from his or her death sentence upon the ground that racial considerations played a significant part in the decision to seek or impose a death sentence.

BACKGROUND: In 1987, the United States Supreme Court decided the case of *McCleskey v. Kemp*. In that case, a black male defendant was convicted of two counts of armed robbery and murder in the state of Georgia. The victim was a white male. McCleskey sought relief from his death sentence on the basis that the Georgia sentencing process was administered in a racially discriminatory manner in violation of the Equal Protection Clause of the United States Constitution. McCleskey supported his claim with a statistical study indicating that the death penalty in Georgia was imposed more often on black defendants and killers of white victims than on white defendants and killers of black victims. McCleskey argued that the study indicated that black defendants who killed white victims had the greatest likelihood of receiving the death penalty. In an opinion authored by Justice Lewis Powell, the majority rejected McCleskey's claims, stating that the study failed to establish that any of the decision makers in McCleskey's specific case acted with discriminatory purpose in violation of the Equal Protection Clause.[1]

Under McCleskey, to prevail on a claim that the administration of the capital punishment system violates the Equal Protection Clause, the petitioner must prove that the decision makers in the petitioner's specific case acted with discriminatory purpose and statistical information about the general administration of the capital punishment system is insufficient to support an inference that any of the decision makers in the case acted with discriminatory purpose.

In response to the McCleskey decision, Congress and several state legislatures, including the North Carolina General Assembly, considered versions of the Racial Justice Act. In 1998, Kentucky became the first state to enact the Racial Justice Act. The North Carolina General Assembly last considered a similar Racial Justice Act during the 2007 Regular Session (House Bill 1291: Racial Justice Act), but did not enact it.

Jeff Hudson and Susan Sitze, Staff Attorneys, contributed to this summary.

S461-SMRV-92(CSRV-46) v1

[1] Excerpted from Race and the Death Penalty after McCleskey: A Case Study of Kentucky's Racial Justice Act, Washington and Lee Journal of Civil Rights and Social Justice, Fall (2005).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 461*
Judiciary I Committee Substitute Adopted 5/12/09
Third Edition Engrossed 5/14/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S461-CSRV-46 [v.2]

6/3/2009 10:32:11 AM

Short Title: North Carolina Racial Justice Act. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT SEEKING OR IMPOSING THE DEATH PENALTY ON THE BASIS OF RACE; TO ESTABLISH A PROCESS BY WHICH RELEVANT EVIDENCE MAY BE USED TO ESTABLISH THAT RACE WAS A SIGNIFICANT FACTOR IN SEEKING OR IMPOSING THE DEATH PENALTY WITHIN THE COUNTY, THE PROSECUTORIAL DISTRICT, THE JUDICIAL DIVISION OR THE STATE, TO IDENTIFY TYPES OF EVIDENCE THAT MAY BE CONSIDERED BY THE COURT WHEN CONSIDERING WHETHER RACE WAS A BASIS FOR SEEKING OR IMPOSING THE DEATH PENALTY, INCLUDING STATISTICAL EVIDENCE, AND TO AUTHORIZE THE DEFENDANT TO RAISE THIS CLAIM AT THE PRETRIAL CONFERENCE OR IN POSTCONVICTION PROCEEDINGS; TO PROVIDE THAT THE DEFENDANT HAS THE BURDEN OF PROVING THAT RACE WAS A SIGNIFICANT FACTOR IN SEEKING OR IMPOSING THE DEATH PENALTY AND TO PROVIDE THAT THE STATE MAY OFFER EVIDENCE TO REBUT THE CLAIMS OR EVIDENCE OF THE DEFENDANT AND IN DOING SO TO USE STATISTICAL EVIDENCE AS WELL AS ANY OTHER EVIDENCE THE COURT DEEMS RELEVANT AND MATERIAL; TO PROVIDE THAT IF RACE IS FOUND TO BE A SIGNIFICANT FACTOR IN THE IMPOSITION OF THE DEATH PENALTY THE DEATH SENTENCE SHALL BE VACATED AND THE DEFENDANT RESENTENCED TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE; TO PROVIDE THAT THIS ACT IS EFFECTIVE WHEN IT BECOMES LAW AND APPLIES RETROACTIVELY, THAT MOTIONS UNDER THIS ACT FOR THOSE CURRENTLY UNDER A DEATH SENTENCE SHALL BE FILED WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS ACT, AND THAT MOTIONS FOR THOSE WHOSE DEATH SENTENCE IS IMPOSED ON OR AFTER THE EFFECTIVE DATE OF THIS ACT SHALL BE FILED AS PROVIDED IN THIS ACT.

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 101.
"North Carolina Racial Justice Act.

"**§ 15A-2010. North Carolina Racial Justice Act.**

No person shall be subject to or given a sentence of death or shall be executed pursuant to any judgment that was sought or obtained on the basis of race.

"**§ 15A-2011. Proof of racial discrimination.**

(a) A finding that race was the basis of the decision to seek or impose a death sentence may be established if the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed.

(b) Evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed may include statistical evidence or other evidence, including, but not limited to, sworn testimony of attorneys, prosecutors, law enforcement officers, jurors, or other members of the criminal justice system or both, that irrespective of statutory factors one or more of the following applies:

(1) Death sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race.

(2) Death sentences were sought or imposed significantly more frequently as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race.

(3) Race was a significant factor in decisions to exercise peremptory challenges during jury selection.

A juror's testimony under this subsection shall be consistent with Rule 606(b) of the North Carolina Rules of Evidence, as contained in G.S. 8C-1.

(c) The defendant has the burden of proving that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed. The State may offer evidence in rebuttal of the claims or evidence of the defendant, including statistical evidence. The court may consider evidence of the impact upon the defendant's trial of any program the purpose of which is to eliminate race as a factor in seeking or imposing a sentence of death.

"**§ 15A-2012. Hearing procedure.**

(a) The defendant shall state with particularity how the evidence supports a claim that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed. The claim shall be raised by the defendant at the pretrial conference or in postconviction proceedings. The court shall schedule a hearing on the claim and shall prescribe a time for the submission of evidence by both parties. If the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed, the court shall order that a death sentence not be sought, or that the death sentence imposed by the judgment shall be vacated and the defendant resentenced to life imprisonment without the possibility of parole.

(b) Notwithstanding any other provision or time limitation contained in Article 89 of Chapter 15A of the General Statutes, a defendant may seek relief from the defendant's death sentence upon the ground that racial considerations played a significant part in the decision to seek or impose a death sentence by filing a motion seeking relief.

Except as specifically stated in subsections (a) and (b) of this section, the procedures and hearing on the motion seeking relief from a death sentence upon the ground that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed, shall follow and comply with G.S. 15A-1420, 15A-1421, and 15A-1422."

SECTION 2. This act is effective when it becomes law and applies retroactively. For persons under a death sentence imposed before the effective date of this act, motions under this act shall be filed within one year of the effective date of this act; for persons whose death sentence is imposed on or after the effective date of this act, motions shall be filed as provided in this act.

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, May 27, 2009

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, May 27, 2009, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Lucy Allen, Angela Bryant, Mitch Gillespie, Jim Gulley, Dewey Hill, Mark Hilton, Sarah Stevens and Joe Tolson. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Seitz. House Sergeant-at-Arms assisting: Marvin Lee, John Brandon and Toussaint Avent. House Pages: Samara Clark from Wake County sponsored by Representative Stam and Hillary Mushaka from Wayne County sponsored by Representative Wainwright. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. The following bill was placed before the Committee:

Senate Bill 167–A BILL TO BE ENTITLED: an act to prohibit smoking on the premises of correctional institutions, to prohibit the possession of tobacco products or cell phones outside of a locked vehicle on the premises of correctional institutions, and to make it a criminal offense to provide tobacco products or cell phones to inmates in the custody of the department of correction. The Chair called upon the bill sponsor Sen. Albertson to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 3*)

Senate Bill 606–A BILL TO BE ENTITLED: an act to establish a procedure for providing notice to creditors without estate administration when a decedent dies leaving no property subject to probate and to make a technical correction to the provision providing for costs in the administration of estates. The Chair called upon the bill sponsor Sen. Berger to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 4*)

Senate Bill 724–A BILL TO BE ENTITLED: an act to allow for certain payments of an estate while a caveat is pending. The Chair called upon the bill sponsor Sen. Berger to explain the bill. After the explanation of the bill Chairman Faison opened the

floor for questions and comments. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 5*)

Senate Bill 797–A BILL TO BE ENTITLED: an act to provide that a Justice's or a judge's disqualification from a case shall be in writing and shall specify the reason for the disqualification. The Chair called upon the bill sponsor Sen. Rand to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Coates was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 6*)

Senate Bill 1027–A BILL TO BE ENTITLED: an act relating to the notification of property owners upon the filing of an application for a zoning map amendment. The Chair called upon the bill sponsor Sen. Rand to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tolson was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 7*)

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:20 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, May 27, 2009
1:00 PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	SB 797	Reasons for Judge's Disqualification.	Senator Rand
2.	SB 1027	Zoning Change/Property Owner Notice.	Senator Rand
3.	SB 606	Notice to Creditors Without Estate Admin	Senator Berger
4.	SB 724	Effect of Caveat on Estate Administration.	Senator Berger
5.	SB 167	No Smoking/Cell Phones on Prison Grounds.	Senator Albertson

4. **Adjourn**

VISITOR REGISTRATION SHEET

Ways & means — 5/27/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Meaghan Lewis Edmisten + Webb	
Penny Burgin	School of Gov't
Alicia Davis	MWC
Daniel Long	NCVC Staff
Kim Creech	NCBA
Emily Salisbury	NCBA
R. Jason Miller	
Chris Killian	Nelson Mullins
Brett Thompson	WHEC CO.
LORRIN FREEMAN	Wake CSC
Anwyl S. Ulm	R. Ulm & Assoc.

VISITOR REGISTRATION SHEET

Ways & Means — 5/27/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jessi Hayes	NC HBA
Kelli Kuhne	NCLM

VISITOR REGISTRATION SHEET

WAKE Mass — 5/27/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charmaine Fuller	CJPC
Mildred Spearman	NCDOC
Marybeth Carroll	NCDOC
[illegible]	JD, AL, PA
Lemuel Hinton	NCUC staff
DAVID BARNES	Payne Sprunell
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	K&L Gates
[illegible]	Electric Cities
Betsy Vetter	Amer. Heart Assn.

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rebecca Troxler	NCACC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 167
Judiciary I Committee Substitute Adopted 5/7/09

Short Title: No Smoking/Cell Phones on Prison Grounds. (Public)

Sponsors:

Referred to:

February 16, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT SMOKING ON THE PREMISES OF CORRECTIONAL INSTITUTIONS, TO PROHIBIT THE POSSESSION OF TOBACCO PRODUCTS OR CELL PHONES OUTSIDE OF A LOCKED VEHICLE ON THE PREMISES OF CORRECTIONAL INSTITUTIONS, AND TO MAKE IT A CRIMINAL OFFENSE TO PROVIDE TOBACCO PRODUCTS OR CELL PHONES TO INMATES IN THE CUSTODY OF THE DEPARTMENT OF CORRECTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 148-23.1 reads as rewritten:

"**§ 148-23.1. ~~Smoking~~ Tobacco products prohibited ~~in~~ on State correctional facilities premises.**

(a) The General Assembly finds that in order to protect the health, welfare, and comfort of inmates in the custody of the Department of Correction and to reduce the costs of inmate health care, it is necessary to prohibit inmates from using tobacco products ~~inside~~ on the premises of State correctional facilities and to ensure that employees and visitors do not use tobacco products ~~inside~~ on the premises of those facilities.

(b) No person may use tobacco products ~~inside~~ on the premises of a State correctional facility, except for authorized religious purposes. Notwithstanding any other provision of law, inmates in the custody of the Department of Correction and persons facilitating religious observances may use and possess tobacco products for religious purposes consistent with the policies of the Department.

(b1) Except as provided in subsection (b) of this section, no person may possess tobacco products on the premises of a State correctional facility. Notwithstanding the provisions of this subsection, an employee or visitor may possess tobacco products within the confines of a motor vehicle located in a designated parking area of a correctional facility's premises if the tobacco product remains in the vehicle and the vehicle is locked when the employee or visitor has exited the vehicle.

(c) The Department of Correction may adopt rules to implement the provisions of this section. Inmates in violation of this section are subject to disciplinary measures to be determined by the Department, including the potential loss of sentence credits earned prior to that violation. Employees in violation of this section are subject to disciplinary action by the Department. Visitors in violation of this section are subject to removal from the facility and loss of visitation privileges.

(d) As used in this section, the following terms mean:

(1) State correctional facility. – All buildings and grounds of a State correctional institution operated by the Department of Correction.

(2) Tobacco products. – Cigars, cigarettes, snuff, loose tobacco, or similar goods made with any part of the tobacco plant that are prepared or used for smoking, chewing, dipping, or other personal use."

SECTION 2. Article 2 of Chapter 148 of the General Statutes is amended by adding a new section to read:

"**§ 148-23.2. Mobile phones prohibited on State correctional facilities premises.**

Except as authorized by Department of Correction policy, no person shall possess a mobile telephone or other wireless communications device on the premises of a State correctional facility. Notwithstanding the provisions of this section, an employee or visitor may possess a mobile telephone or other wireless communications device within the confines of a motor vehicle located in a designated parking area of a correctional facility's premises if the mobile telephone or other wireless communications device remains in the vehicle and the vehicle is locked when the employee or visitor has exited the vehicle."

SECTION 3. G.S. 14-258.1 reads as rewritten:

"**§ 14-258.1. Furnishing poison, controlled substances, deadly weapons, cartridges, ammunition or alcoholic beverages to inmates of charitable, mental or penal institutions or local confinement ~~facilities.~~ facilities; furnishing tobacco products or mobile phones to inmates.**

(a) If any person shall give or sell to any inmate of any charitable, mental or penal institution, or local confinement facility, or if any person shall combine, confederate, conspire, aid, abet, solicit, urge, investigate, counsel, advise, encourage, attempt to procure, or procure another or others to give or sell to any inmate of any charitable, mental or penal institution, or local confinement facility, any deadly weapon, or any cartridge or ammunition for firearms of any kind, or any controlled substances included in Schedules I through VI contained in Article 5 of Chapter 90 of the General Statutes except under the general supervision of a practitioner, poison or poisonous substance, except upon the prescription of a physician, he shall be punished as a Class H felon; and if he be an officer or employee of any institution of the State, or of any local confinement facility, he shall be dismissed from his position or office.

(b) Any person who shall knowingly give or sell any alcoholic beverages to any inmate of any State mental or penal institution, or to any inmate of any local confinement facility, except for medical purposes as prescribed by a duly licensed physician and except for an ordained minister or rabbi who gives sacramental wine to an inmate as part of a religious service; or any person who shall combine, confederate, conspire, procure, or procure another or others to give or sell any alcoholic beverages to any inmate of any such State institution or local confinement facility, except for medical purposes as prescribed by a duly licensed physician and except for an ordained minister or rabbi who gives sacramental wine to an inmate as part of a religious service; or any person who shall bring into the buildings, grounds or other facilities of such institution any alcoholic beverages, except for medical purposes as prescribed by a duly licensed physician or sacramental wine brought by an ordained minister or rabbi for use as part of a religious service, shall be guilty of a Class 1 misdemeanor. If such person is an officer or employee of any institution of the State, such person shall be dismissed from office.

(c) Any person who knowingly gives or sells any tobacco product, as defined in G.S. 148-23.1, to an inmate in the custody of the Department of Correction and on the premises of a correctional facility, or any person who knowingly gives or sells any tobacco product to a person who is not an inmate for delivery to an inmate in the custody of the Department of Correction and on the premises of a correctional facility, other than for authorized religious purposes, is guilty of a Class 1 misdemeanor.

(d) Any person who knowingly gives or sells a mobile telephone or other wireless communications device, or a component of one of those devices, to an inmate in the custody of the Department of Correction, or any person who knowingly gives or sells any such device or

component to a person who is not an inmate for delivery to an inmate, is guilty of a Class 1 misdemeanor."

SECTION 4. The Department of Correction shall ensure that sufficient notice is provided to inmates, staff, and the public of the prohibitions and penalties established in this act, through the posting of signs in prominent places at all State correctional facilities and any other measures the Department deems necessary to sufficiently publicize those prohibitions and penalties.

SECTION 5. This act becomes effective March 1, 2010, and applies to acts committed on or after that date.

SENATE BILL 167:
No Smoking/Cell Phones on Prison Grounds

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	May 26, 2009
Introduced by:	Sen. Albertson	**Prepared by:**	Brenda J. Carter
Analysis of:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 167 would prohibit smoking on the premises of correctional institutions, prohibit the possession of tobacco products or cell phones outside of a locked vehicle on the premises of correctional institutions, and make it a criminal offense to provide tobacco products or cell phones to inmates in the custody of the Department of Correction.

CURRENT LAW: G.S. 148-23.1 prohibits the use of tobacco products inside State correctional facilities, except for authorized religious purposes. G.S. 14-258.1 makes it unlawful to furnish certain items to inmates of any charitable, mental, or penal institution, including a local confinement facility. It is a Class H felony to provide poison, a controlled substance, a deadly weapon, or any cartridge or ammunition to an inmate. It is a Class 1 misdemeanor to knowingly give or sell any alcoholic beverages to an inmate. If the person providing the contraband to the inmate is an officer or employee of the institution, in addition to any criminal penalties that might apply, that person's employment will be terminated. Inmates in possession of contraband items are subject to prison disciplinary proceedings.

BILL ANALYSIS: **Section 1** of the bill would amend G.S. 148-23.1 to prohibit the use and possession of tobacco products anywhere on the premises of a State correctional facility. Exemptions are provided for use and possession for religious purposes consistent with the policies of the Department, and also for possession by employees or visitors within the confines of a motor vehicle located in a parking area if the tobacco product remains in the vehicle and the vehicle is locked when the employee or visitor exits the vehicle.

Section 2 of the bill would create a new G.S. 148-23.2, which would prohibit the possession of a cell phone or other wireless communications device on the premises of a State correctional facility, except as authorized by DOC policy. An exemption is provided for possession by employees or visitors within the confines of a motor vehicle located in a parking area if the cell phone remains in the vehicle and the vehicle is locked when the employee or visitor exits the vehicle.

Section 3 of the bill would amend G.S. 14-258.1 to create two new offenses, making it a Class 1 misdemeanor if a person:

- Knowingly gives or sells tobacco products to an inmate on the premises of a correctional facility or to a person for delivery to an inmate.
- Knowingly gives or sells a mobile telephone or other wireless communications device, or a component of one of those devices, to an inmate or to a person for delivery to an inmate.

Section 4 of the bill would require the Department of Correction to provide notice to inmates, staff and the public of the prohibitions and penalties established in the bill.

EFFECTIVE DATE: The bill would become effective March 1, 2010, and apply to acts committed on or after that date.

Susan Sitze, counsel to Senate Judiciary I, substantially contributed to this summary.

S167-SMRV-86(e2) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 167 A BILL TO BE ENTITLED AN ACT TO PROHIBIT SMOKING ON THE PREMISES OF CORRECTIONAL INSTITUTIONS, TO PROHIBIT THE POSSESSION OF TOBACCO PRODUCTS OR CELL PHONES OUTSIDE OF A LOCKED VEHICLE ON THE PREMISES OF CORRECTIONAL INSTITUTIONS, AND TO MAKE IT A CRIMINAL OFFENSE TO PROVIDE TOBACCO PRODUCTS OR CELL PHONES TO INMATES IN THE CUSTODY OF THE DEPARTMENT OF CORRECTION.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 606
Judiciary I Committee Substitute Adopted 5/5/09

Short Title: Notice to Creditors Without Estate Admin. (Public)

Sponsors:

Referred to:

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE FOR PROVIDING NOTICE TO CREDITORS WITHOUT ESTATE ADMINISTRATION WHEN A DECEDENT DIES LEAVING NO PROPERTY SUBJECT TO PROBATE AND TO MAKE A TECHNICAL CORRECTION TO THE PROVISION PROVIDING FOR COSTS IN THE ADMINISTRATION OF ESTATES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 28A of the General Statutes is amended by adding a new Article to read:

"Article 29.

"Notice to Creditors Without Estate Administration.

"**§ 28A-29-1. Notice to creditors with estate administration.**

When a decedent dies testate or intestate leaving no property subject to probate, any person otherwise qualified to serve as personal representative of the estate pursuant to Article 4 of this Chapter or the trustee then serving under the terms of a revocable trust created by the decedent may file a petition to be appointed as a limited personal representative to provide notice to creditors without administration of an estate before the clerk of superior court of the county where the decedent was domiciled at the time of death. This procedure is not available if the decedent's will provides that it is not available. A limited personal representative shall have the rights and obligations provided for in this Article.

"**§ 28A-29-2. Petition.**

(a) The application for appointment as limited personal representative shall be in the form of an affidavit sworn to before an officer authorized to administer oaths, signed by the applicant or his attorney, which may be supported by other proof under oath in writing, all of which shall be recorded and filed by the clerk of superior court, and shall allege the following facts:

(1) The name and domicile of the decedent at the time of death;

(2) The date and place of death of the decedent;

(3) That, so far as is known or can with reasonable diligence be ascertained, the decedent's property is not subject to probate; and

(4) That no application or petition for appointment of a personal representative is pending or has been granted in this State.

(b) If it appears to the clerk of superior court that the application and supporting evidence comply with the requirements of subsection (a) of this section and on the basis thereof he finds that the applicant is entitled to appointment, the clerk shall issue letters of limited administration.

(c) The petition shall be filed by the clerk upon payment of the fee provided in G.S. 7A-307(a) and shall be indexed in the index to estates.

"**§ 28A-29-3. Effect of appointment.**

A limited personal representative appointed under this Article shall provide notice to all persons, firms, and corporations having claims against the decedent, and proof of such notice shall be in accordance with the provisions of Article 14 of this Chapter.

"**§ 28A-29-4. Presentation, payment, and limitation of claims.**

Upon compliance with G.S. 28A-29-3, creditors of the decedent and the decedent's property shall present claims in accordance with the provisions of Article 19 of this Chapter, and creditors failing to file such claims shall be barred as provided in G.S. 28A-19-3. The limited personal representative shall administer claims so presented in accordance with the procedures and priorities provided pursuant to Article 19 of this Chapter. At any time after a claim is presented in accordance with the provisions of this section, the clerk may appoint a personal representative to administer the decedent's estate.

"**§ 28A-29-5. Right to petition for appointment of personal representative.**

Nothing in this Article shall preclude any person qualified to serve as personal representative pursuant to G.S. 28A-4-1, including the limited personal representative, from petitioning the clerk of superior court for the appointment of a personal representative to administer the decedent's estate."

SECTION 2. G.S. 7A-307(a) reads as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under ~~G.S. 36A-23.1,~~ G.S. 36C-2-203, and in collections of personal property by affidavit, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ten dollars ($10.00), to be remitted to the county. 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.

(1a) For the upgrade, maintenance, and operation of the judicial and county courthouse phone systems, the sum of one dollar ($1.00), to be credited to the Court Information Technology Fund.

(2) For support of the General Court of Justice, the sum of fifty dollars ($50.00), plus an additional forty cents (40¢) per one hundred dollars ($100.00), or major fraction thereof, of the gross estate, not to exceed six thousand dollars ($6,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be fifteen dollars ($15.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of two dollars and five cents ($2.05) of each fifty-dollar ($50.00) General Court of Justice fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed six thousand dollars ($6,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of twenty dollars ($20.00) shall be assessed on the filing of each annual and final account. However, the fee shall be assessed only on newly contributed or acquired assets, all interest or other income that accrues or is earned on or with respect to any existing or newly contributed or acquired assets, and realized gains on the sale of any and all trust assets. Newly contributed or acquired assets do not include assets acquired by the sale, transfer, exchange, or otherwise of the amount of trust property on which fees were previously assessed.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(2c) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate shall not be assessed on the gross estate of a trust that is the subject of a proceeding under ~~G.S. 36A-23.1~~ G.S. 36C-2-203 if there is no requirement in the trust that accountings be filed with the clerk.

(2d) Notwithstanding subdivisions (1) and (2) of this subsection, the only cost assessed in connection with the qualification of a limited personal representative under G.S. 28A-29-1 shall be a fee of twenty dollars ($20.00) to be assessed upon the filing of the petition.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of twenty dollars ($20.00)."

SECTION 3. This act becomes effective October 1, 2009, and applies to estates of persons dying on or after that date.

SENATE BILL 606:
Notice to Creditors Without Estate Admin

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary II	**Date:**	May 26, 2009
Introduced by:	Sen. Berger of Rockingham	**Prepared by:**	Tim Hovis
Analysis of:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 606 creates a new procedure for providing notice to creditors, in estates not subject to probate, by authorizing appointment of a limited personal representative without estate administration.

BILL ANALYSIS:

Section 1 of Senate Bill 606 adds a new Article 29 to Chapter 28A of the General Statutes, Administration of Decedents' Estates, entitled "Notice to Creditors Without Estate Administration".

This new Article:

- authorizes appointment of a limited personal representative without administration of the estate, for the purpose of providing notice to creditors, in the case of an estate with no property subject to probate. Any person qualified to serve as a personal representative of an estate may petition the Clerk of Superior Court in the county where the decedent was domiciled at the time of death to be apponted as a limited personal representative.
- provides that a person applying to be a limited personal representative shall submit a sworn affidavit to the Clerk of Superior Court, and submit a fee of $20.
- provides that upon qualification and appointment, the limited personal representative is to provide notice to all persons, firms, and corporations having claims against the decedent, and file proof of the notice with the Clerk within three months. *(G.S. 28A-14-2, G.S. 28A-20-1).*
- provides that, in accordance with the existing procedures of Article 19 (Claims Against the Estate), creditors of the decedent shall present claims, creditors failing to file such claims shall be barred, and the limited personal representative shall administer claims presented in accordance with the procedures and priorities of Article 19. At any time after a claim is presented in accordance with the provisions of new G.S. 28A-29-4, the clerk may appoint a personal representative to administer the decedent's estate.
- provides that nothing in new Article 29, enacted by this bill, precludes any person qualified to serve as personal representative, including a limited personal representative, from petitioning the clerk of superior court for the appointment of a personal representative to administer the decedent's estate.

Section 2 of the bill corrects a citation, and specifies a fee of $20 of qualification and appointment as a limited personal representative

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to estates of persons dying on or after that date.

S606-SMRG-52(e2) v2

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 606 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A PROCEDURE FOR PROVIDING NOTICE TO CREDITORS WITHOUT ESTATE ADMINISTRATION WHEN A DECEDENT DIES LEAVING NO PROPERTY SUBJECT TO PROBATE AND TO MAKE A TECHNICAL CORRECTION TO THE PROVISION PROVIDING FOR COSTS IN THE ADMINISTRATION OF ESTATES.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 724

Short Title:	Effect of Caveat on Estate Administration.	(Public)
Sponsors:	Senators Berger of Rockingham; Hunt and Tillman.	
Referred to:	Judiciary I.	

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR CERTAIN PAYMENTS OF AN ESTATE WHILE A CAVEAT IS PENDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 31-36 reads as rewritten:

"**§ 31-36. ~~Caveat suspends proceedings under will.~~ Effect of caveat on estate administration.**

(a) Order of Clerk. – Where a caveat is entered and bond given, the clerk of the superior court shall forthwith issue an order that shall apply during the pendency of the caveat to any personal representative, having the estate in charge, ~~to suspend all further proceedings in relation to the estate, except the preservation of the property and the collection of debts and payment of all taxes and debts that are a lien upon the property of the decedent, as may be allowed by order of the clerk of the superior court, until a decision of the issue is had.~~as follows:

(1) Distributions to beneficiaries. – That there shall be no distributions of assets of the estate to any beneficiary;

(2) Commissions. – That no commissions shall be advanced or awarded to any personal representative;

(3) Accountings. – That the personal representative shall file all accountings required by the clerk of superior court and that the personal representative may pay any applicable filing fees associated with those accountings from the assets of the estate;

(4) Preservation of estate assets. – That the personal representative shall preserve the property of the estate and that the personal representative is authorized to pursue and prosecute claims that the estate may have against others; and

(5) Taxes, claims and debts of estate. – That the personal representative may file all appropriate tax returns and that the personal representative may pay, in accordance with the procedures of subsection (b) of this section: taxes; funeral expenses of the decedent; debts that are a lien upon the property of the decedent; bills of the decedent accrued before death; claims against the estate that are timely filed; professional fees related to administration of the estate, including fees for tax return preparation, appraisal fees, and attorneys' fees for estate administration.

(b) Procedures. – In regard to payment of any of the items listed in subdivision (5) of subsection (a) of this section, the personal representative shall file with the clerk a notice of the personal representative's intent to pay those items and shall serve the notice upon all parties to

the caveat, pursuant to Rule 4 of the Rules of Civil Procedure. If within 10 days of service any party files with the clerk a written objection to that payment, the clerk shall schedule a hearing and determine whether the proposed payment shall be made. If no such objection is filed with the clerk, the clerk may approve the payment without hearing, and upon that approval, the personal representative may make the payment. The parties to the caveat may consent to any such payment, and upon such consent, the clerk may approve the payment without hearing. The clerk may defer ruling on the payment pending the resolution of the caveat.

(c) Preservation of Estate Assets. – Questions regarding the use, location, and disposition of assets that cannot be resolved by the parties and consented to by the clerk shall be decided by the clerk. When a question has not been resolved by agreement, either party may request a hearing before the clerk upon 10 days notice and shall serve the notice upon all parties to the caveat, pursuant to Rule 4 of the Rules of Civil Procedure. Decisions of the clerk may be appealed to the superior court."

SECTION 2. This act becomes effective October 1, 2009, and applies to estates of decedents dying on or after that date.

SENATE BILL 724:
Effect of Caveat on Estate Administration

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	May 26, 2009
Introduced by:	Sen. Berger of Rockingham	**Prepared by:**	Tim Hovis* Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 724 sets out the actions and payments that may occur while a caveat to a will proceeding is pending.***

CURRENT LAW: Under current law, a person entitled under a will, or interested in an estate, may enter a "caveat" to the probate of a will. The purpose of the caveat proceeding is to determine whether the document purporting to be the will of a person is, in fact, their will. G.S. 31-32.

If a caveat proceeding is commenced, it suspends all further proceedings in relation to the estate, except for the preservation of the property of the estate, the collection of debts, and payment of all taxes and debts that are a lien upon the property of the decedent (if authorized by the clerk of the superior court). G.S. 31-36.

BILL ANALYSIS: Senate Bill 724 amends G.S. 31-36 to specifically describe the actions that are authorized while a caveat proceeding is pending.

The bill provides that during the pendency of a caveat proceeding:

- no assets may be distributed to any beneficiary of the estate.
- no commissions may be advanced or awarded to the personal representative.
- the personal representative is required to file all accountings required by the clerk of superior court, and any applicable filing fees associated with those accountings may be paid from the assets of the estate.
- the personal representative is required to preserve the property of the estate, and pursue and prosecute claims that the estate may have against others.
- the personal representative may file all appropriate tax returns.

In addition, the bill provides that the personal representative may pay the following expenses, if the personal representative has filed notice with the clerk of superior court, and has served notice upon all parties to the caveat:

- taxes.
- funeral expenses of the decedent.
- debts that are a lien upon the property of the decedent.
- bills of the decedent accrued before death.
- claims against the estate that are timely filed.
- professional fees related to administration of the estate, including fees for tax return preparation, appraisal fees, and attorneys' fees for estate administration.

If an objection to any of these payments is filed within 10 days of service, the clerk is required to schedule a hearing on the proposed payments. The parties to the caveat may consent to a payment, and the clerk may approve the payment without hearing. The clerk may defer ruling on the payment pending the resolution of the caveat.

In addition, the bill provides that questions regarding the use, location, and disposition of assets that cannot be resolved by the parties shall be decided by the clerk. When a question has not been resolved by agreement, either party may request a hearing before the clerk upon 10 days notice and shall serve the notice upon all parties to the caveat. Decisions of the clerk may be appealed to the superior court.

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to estates of decedents dying on or after that date.

*This summary was substantially contributed to by Giles Perry, Staff Attorney.

S724-SMRG-50(e1) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for
SB 724 A BILL TO BE ENTITLED AN ACT TO ALLOW FOR CERTAIN PAYMENTS OF AN ESTATE WHILE A CAVEAT IS PENDING.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 797
Judiciary I Committee Substitute Adopted 5/7/09

Short Title: Reasons for Judge's Disqualification. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A JUSTICE'S OR A JUDGE'S DISQUALIFICATION FROM A CASE SHALL BE IN WRITING AND SHALL SPECIFY THE REASON FOR THE DISQUALIFICATION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 7A of the General Statutes is amended by adding a new Article to read:

"Article 6A.

"Disqualification of Justices or Judges of the Appellate Division of the General Court of Justice.

"**§ 7A-39.20. Disqualification of justice or judge shall be in writing.**

A justice or judge may disqualify himself or herself from participating in the consideration or decision of any question presented to the Supreme Court or the Court of Appeals for any of the reasons provided for in Canon 3 of the Code of Judicial Conduct or for any other reason that renders the justice or judge unable to perform the duties required of the justice or judge in the proceeding in an impartial manner. A justice or judge who disqualifies himself or herself, whether on the justice's or judge's own motion or in response to a motion of one of the parties, shall do so in writing and shall state the specific reason or reasons for the disqualification."

SECTION 2. Chapter 7A of the General Statutes is amended by adding a new Article to read:

"Article 26A.

"Disqualification of Judges of the Trial Divisions of the General Court of Justice.

"**§ 7A-295. Disqualification of judge shall be in writing.**

A judge may disqualify himself or herself from presiding over a civil or criminal proceeding for any of the reasons provided for in Canon 3 of the Code of Judicial Conduct or in G.S. 15A-1223 or for any other reason that renders the judge unable to perform the duties required of the judge in the proceeding in an impartial manner. A judge who disqualifies himself or herself, whether on the judge's own motion or in response to a motion of one of the parties, shall do so in writing and shall state the specific reason or reasons for the disqualification."

SECTION 3. G.S. 15A-1223 reads as rewritten:

"**§ 15A-1223. Disqualification of judge.**

(a) A judge on his or her own motion may disqualify himself or herself from presiding over a criminal trial or other criminal proceeding.

(b) A judge, on motion of the State or the defendant, must disqualify himself or herself from presiding over a criminal trial or other criminal proceeding if ~~he~~ the judge is:

(1) Prejudiced against the moving party or in favor of the adverse party; or

(2) Repealed by Session Laws 1983 (Regular Session 1984), c. 1037, s. 6.
(3) Closely related to the defendant by blood or marriage; or
(4) For any other reason unable to perform the duties required of ~~him~~ the judge in an impartial manner.

(c) A motion to disqualify must be in writing and must be accompanied by one or more affidavits setting forth facts relied upon to show the grounds for disqualification.

(d) A motion to disqualify a judge must be filed no less than five days before the time the case is called for trial unless good cause is shown for failure to file within that time. Good cause includes the discovery of facts constituting grounds for disqualification less than five days before the case is called for trial.

(e) A judge must disqualify himself or herself from presiding over a criminal trial or proceeding if ~~he~~ the judge is a witness for or against one of the parties in the case.

(f) A judge may disqualify himself or herself from presiding over a criminal proceeding for any of the reasons provided for in Canon 3 of the Code of Judicial Conduct or in this section or for any other reason that renders the judge unable to perform the duties required of the judge in the proceeding in an impartial manner. A judge who disqualifies himself or herself, whether on the judge's own motion or in response to a motion of one of the parties, shall do so in writing and shall state the specific reason or reasons for the disqualification."

SECTION 4. This act becomes effective July 1, 2009.

SENATE BILL 797:
Reasons for Judge's Disqualification

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	May 26, 2009
Introduced by:	Sen. Rand	**Prepared by:**	Tim Hovis*
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 797 requires a justice's or judge's disqualification from a case to be in writing, and to specify the reason for the disqualification.***

CURRENT LAW: Canon 3 of the North Carolina Code of Judicial Conduct provides that "on motion of any party, a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned", and includes examples. In addition, G.S. 15A-1223 provides a disqualification procedure for Superior Court judges in criminal trials and other criminal proceedings.

BILL ANALYSIS:

Section 1 of the bill provides that a justices or a judge of the **Appellate Division of the State Courts (Supreme Court and Court of Appeals)** may disqualify himself or herself from participating in the consideration or decision of any question presented to the Supreme Court or the Court of Appeals for any of the reasons provided for in Canon 3 of the Code of Judicial Conduct, or for any other reason that renders the justice or judge unable to perform the duties required of the justice or judge in the proceeding in an impartial manner. A justice or judge who disqualifies himself or herself, whether on the justice's or judge's own motion or in response to a motion of one of the parties, is required by this section to **do so in writing and state the specific reason or reasons for the disqualification.**

Section 2 of the bill provides that a judge in the **Trial Divisions of the General Court of Justice (Superior and District Court)** may disqualify himself or herself from presiding over a civil or criminal proceeding for any of the reasons provided for in Canon 3 of the Code of Judicial Conduct or in G.S. 15A-1223, or for any other reason that renders the judge unable to perform the duties required of the judge in the proceeding in an impartial manner. A judge who disqualifies himself or herself, whether on the judge's own motion or in response to a motion of one of the parties, is required to **do so in writing and state the specific reason or reasons for the disqualification.**

Section 3 of the bill **amends an existing disqualification procedure applicable only to Superior Court Judges presiding over a criminal trial or other criminal proceeding.** This section provides that the Superior Court judge may disqualify himself or herself from presiding over a criminal proceeding for any of the reasons provided for in Canon 3 of the Code of Judicial Conduct, any reasons listed in G.S. 15A-1223, or for any other reason that renders the judge unable to perform the duties required of the judge in the proceeding in an impartial manner. A judge who disqualifies himself or herself, whether on the judge's own motion or in response to a motion of one of the parties, is required to **do so in writing and shall state the specific reason or reasons for the disqualification.**

EFFECTIVE DATE: This act becomes effective July 1, 2009.

*This summary was substantially contributed to by Mr. Giles Perry, Staff Attorney.

S797-SMRG-51(e2) v3

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 797 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A JUSTICE'S OR A JUDGE'S DISQUALIFICATION FROM A CASE SHALL BE IN WRITING AND SHALL SPECIFY THE REASON FOR THE DISQUALIFICATION.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 1027
State and Local Government Committee Substitute Adopted 5/12/09

Short Title: Zoning Change/Property Owner Notice. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT RELATING TO THE NOTIFICATION OF PROPERTY OWNERS UPON THE FILING OF AN APPLICATION FOR A ZONING MAP AMENDMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-343(a) reads as rewritten:

"(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. Except for a county-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the board of commissioners that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons ~~mailing such notices~~ required to provide notice shall certify to the ~~Board of Commissioners~~board of commissioners that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud."

SECTION 2. G.S. 160A-384(a) reads as rewritten:

"(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. Except for a city-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the city council that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person

or persons ~~mailing such notices~~ required to provide notice shall certify to the ~~City Council~~city council that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud."

SECTION 3. This act is effective when it becomes law and applies to any application for a zoning map amendment made on or after that date.

SENATE BILL 1027:
Zoning Change/Property Owner Notice

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary II	**Date:**	May 26, 2009
Introduced by:	Sen. Rand	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***Senate Bill 1027 would require that the applicant for a zoning map change, if that person is not the owner of the affected land, must certify that the owner of land subject to the proposed change has received actual notice of the proposed change and a copy of notice of the public hearing on the change.***

CURRENT LAW: Currently, both the city and county zoning statutes require that the owners of land subject to a proposed change to the zoning map and the owners of land abutting that property be notified of the public hearing on the proposed change by first class mail. The notice must be mailed at least 10 but not more than 25 days before the hearing.

BILL ANALYSIS: The bill would require that, if the person applying for a change to the zoning map affecting a piece of land is not the owner of that land, the applicant must certify that the owner has received actual notice of the proposed change and a copy of the notice of the public hearing on the change. This certification requirement would not apply if the city or county itself was proposing the change.

EFFECTIVE DATE: The bill would be effective when it becomes law, and apply to any application for zoning map amendment made on or after that date.

William Gilkeson, counsel to the Senate State & Local Government Committee, substantially contributed to this summary.

S1027-SMRV-84(e2) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 1027 A BILL TO BE ENTITLED AN ACT RELATING TO THE NOTIFICATION OF PROPERTY OWNERS UPON THE FILING OF AN APPLICATION FOR A ZONING MAP AMENDMENT.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, June 3, 2009

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, June 3, 2009, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Lucy Allen, Angela Bryant, Mitch Gillespie, Jim Gulley, Phil Haire, Dewey Hill, Mark Hilton, Sarah Stevens, Joe Tolson, and Winkie Wilkins. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Seitz. House Sergeant-at-Arms assisting: Marvin Lee, James Worth and Carlton Adams. House Pages: Aubrey Tsao from Sampson County sponsored by Representative Bell, Kelly Grady from Columbia South Carolina sponsored by Rep. Cotham and Ma'Kayla Kasey from Cabarrus County sponsored by Representative Barnhart. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. The following bill was placed before the Committee:

Senate Bill 481-A BILL TO BE ENTITLED: an act to allow a trustee to appoint trust property to another trust for the same beneficiary. The Chair called upon the bill sponsor Sen. Hartsell to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Hilton was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 3*)

Senate Bill 482-A BILL TO BE ENTITLED: an act to clarify that a permissible appointee under a power of appointment is not a trust beneficiary, and to clarify that a loan or pledge by a trustee may be made in connection with a loan of the trustee's own funds. The Chair called upon the bill sponsor Sen. Hartsell to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 4*)

Senate Bill 483-A BILL TO BE ENTITLED: an act to clarify that courts in North Carolina have the authority to create trusts by judicial order or judgment in cases properly before the court; and to specifically provide that North Carolina courts

have the right to create trusts pursuant to 42 u.s.c. § 1396P(d)(4)(A). The Chair called upon the bill sponsor Sen. Hartsell to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 5*)

Senate Bill 461-A BILL TO BE ENTITLED: an act to provide for the fair and reliable imposition of capital sentences, to ensure that assistance rendered by any health care professional in the process of a lawful execution by the state does not result in disciplinary or corrective action by any state authorized board or authority, to exclude the administration of controlled substances used in an execution from the practice of medicine, to remove the requirement that the Governor and council of state approve the necessary appliances and qualified personnel for the infliction of the punishment of death, and to prohibit the secretary of correction from scheduling more than one execution within a 30-day period. Rep. Coates moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Sen. McKissick to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Due to the multiple questions by the committee and visitors we ran out of time and will rescheduled this bill. The Bill, Bill Analysis, PCS and Sponsor Handouts are attached.

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:54 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant



NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, June 3, 2009
1:00 PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	SB 481	Trustee's Power to Appoint to Other Trust.	Senator Hartsell
2.	SB 482	Clarifications to Trust Code.	Senator Hartsell
3.	SB 483	Clarify Judicial Creation of Trust.	Senator Hartsell
4.	SB 461	North Carolina Racial Justice Act.	Senator McKissick

4. **Adjourn**

VISITOR REGISTRATION SHEET

Ways & Means — 6.3.2009

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeremy Collins	NCCM Durham, NC
Anthony Roulette	NRA
Eddie Caldwell	NC Sheriffs' Assn.
Ray Dorer	Conference of DAs
Casandra White	NCAOC
PR Powell	ACC
Todd Bar-	NCAJ
Kris Parks	DRNC
Chris Hollis	K&L Gates
Keith Weatherly	Rep. Starnes
Chad Barefoot	Rep. Starnes

Phil Berger
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Republican Leader
North Carolina House of Representatives
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Senator Eddie Goodall, Republican Joint Caucus Leader
332 Legislative Office Building - (919) 733-7659 - *eddieg@ncleg.net*

JOINT CAUCUS PRESS RELEASE

FOR IMMEDIATE RELEASE May 5, 2009

Legislature Must Not Interfere With Resumption of Death Penalty

N.C. Supreme Court Sweeps Away Medical Board Objection

Raleigh, N.C. -- A long-awaited N.C. Supreme Court decision should allow the resumption of the death penalty, argue Republican Leaders of the N.C. General Assembly. The Court ruled Friday that the N.C. Medical Board cannot prevent doctors from participating in executions. This legal challenge by the Board has resulted in a *de facto* moratorium on executions since August 2006.

State law requires that physicians be present at all executions. The Court's decision swept away the authority claimed by the Medical Board to prohibit doctors from participating in executions. There are currently 163 inmates on death row awaiting execution. The last significant legal hurdle has now been resolved by the Supreme Court which should allow executions to resume. (Judge Donald Stephens is still deciding a related issue concerning the procedure of the Council of State.)

"We should now, without legislative interference, proceed with all deliberate speed to provide justice for those murder victims and their families," said House Republican Leader Paul Stam (R-Wake). "Justice delayed is justice denied far too long in allowing these sentences to be administered. In addition to the families of the victims of these 163 inmates, I believe that 75 innocent people were victims of homicide because of this *de facto* moratorium.

"The death penalty deters some, but not all murders. A moratorium almost guarantees criminals will not be deterred during a moratorium period. They might read the headlines but not the fine print. And district attorneys are unlikely to try capital cases during a moratorium period since the extra, considerable expense may well be for naught," said Stam.

"It is well past time to carry out the sentences of first degree murder for the violent

criminals who have had their punishments stayed by this moratorium," said Senate Republican Leader Phil Berger (R-Rockingham). "That is the very least that can be done to ensure justice for dozens of victims and their families."

Professors Marchesini and Cloninger of the University of Houston found a 21 month court-imposed moratorium in Texas likely caused 90 additional homicides. Whether North Carolina experienced a similar "surge" in homicide during its three year moratorium is unknown due to confounding variables, but it is likely. If so, this would mean the "cost" of a moratorium in North Carolina would include around 25 additional innocent victims of homicide per year. House and Senate Republicans believe this is an unacceptable cost.

Attached are extracts of many studies on deterrence gathered by the Office of the Attorney General. These studies differ slightly on the numbers of additional homicide victims resulting from moratoriums, but they are the same order of magnitude.

"In view of the safeguards and the exhaustive state and federal court review of all death penalty cases, as well as the absence of any actual demonstration of real systemic problems in North Carolina resulting in the execution of the actually innocent, a moratorium on executions of murderers is unwarranted for the proper administration of justice," said Stam. "The *de facto* moratorium on the death penalty caused real harm, pain and suffering to the families of the innocent, to the loved ones of those who have been silenced by violent, premeditated murder."

The U.S. Supreme Court, in a decision of April 2008 ruled that lethal injections did not violate the "cruel and unusual" prohibition in the Constitution. This ruling could have allowed first degree murder sentences in North Carolina to be carried out. However, the challenge by the Medical Board further delayed justice for murder victims in our state.

House and Senate Republican Leaders say the General Assembly must not enact the so-called "Racial Justice Act", HB 472. and SB 461. This legislation would impose county-by-county quotas for the imposition of the death penalty. Today a defendant may argue and win a claim of racial discrimination. These bills do not change that. This legislation was considered during the previous legislative session, but was not adopted by the Senate.

Procedural Review is Extensive

Death sentences are already reviewed extensively by both state and federal courts, and ultimately by the Governor. On average, 8 to 15 years pass before executions are carried out in North Carolina. Capital cases are reviewed by 47 judges, state and federal, all looking at claims of error in the trial or claims of innocence.

Each murderer already has an individual moratorium while their case is studied, and procedural protections are extensive:

Open-file discovery: In 1996 the General Assembly provided capital defendants the right to complete post-conviction discovery of all files, and may use such discovery to

claim the prosecution failed to disclose evidence the defendant believed to be important.

Innocence Protection Act: In 2001, pre-trial and post-trial DNA testing was augmented to prevent the conviction of the innocent.

No Death Penalty for the Mentally Retarded: In 2001, the General Assembly prohibited the execution of mentally retarded defendants.

Prosecutorial discretion: In 2001, prosecutors were granted authority to use discretion in deciding *not* to seek the death penalty. Ironically, proponents of a moratorium now point to the use of that discretion as an argument for a moratorium.

Additional representation: Indigent defendants facing the death penalty are appointed two trial attorneys, and, since 1996, capital defendants are provided two attorneys in post-conviction hearings, all at taxpayer's expense.

Proportionality considered: The Supreme Court of North Carolina reviews all death penalty cases on direct appeal for proportionality to other similar cases. On the other hand the Court does *not* have authority to reject a life sentence and make it capital. Proportionality review is a one-way street in favor of those sentenced to death.

The Innocence Inquiry Commission: In 2006, the General Assembly created the Innocence Inquiry Commission to insure we provide every avenue of relief for those who claim to be factually innocent. "While I was pleased to be the Republican House floor leader for the 2006 Innocence Inquiry Act - Session Law 2006-184 - *I reject any moratorium*," said Stam.

Innocence claims are rare: Of 43 convicts executed after North Carolina reinstated capital punishment in 1977, none had any credible claim of "actual innocence." Sixty-Five percent of those actually executed have been white, which puts a new light on the claim most were minorities.

Please visit this link to view the press conference.

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GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 2, 2009

TO: Representative Stam

FROM: Danielle Seale & Douglas Holbrook, Fiscal Research Division

RE: Senate Bill 461 (Third Edition)

FISCAL IMPACT

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

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
EXPENDITURES GENERAL FUND					
Judicial - AOC	**Exact amount cannot be determined.**				
Judicial – IDS					
Justice	**Could be as high as $549,380 per year**				
POSITIONS: (cumulative)	**Could require 6 additional positions (DOJ)**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch; Department of Justice

EFFECTIVE DATE: Section 1 of this act is effective when it becomes law and applies retroactively. The remainder of this act is effective when it becomes law.

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY:

Current Law: In 1987, the United States Supreme Court decided the case of *McCleskey v. Kemp*. In that case, a black male defendant was convicted of two counts of armed robbery and murder in the state of Georgia. The victim was a white male. McCleskey sought relief from his death sentence on the basis that the Georgia sentencing process was administered in a racially discriminatory manner in violation of the Equal Protection Clause of the United States Constitution. McCleskey supported his claim with a statistical study indicating that the death penalty in Georgia was imposed more often on black defendants and killers of white victims than on white defendants and killers of black victims. McCleskey argued that the study indicated that black defendants who killed white victims had the greatest likelihood of receiving the death penalty. In an opinion authored by Justice Lewis Powell, the majority rejected McCleskey's claims, stating that the study failed to establish that any of the decision makers in McCleskey's specific case acted with discriminatory purpose in violation of the Equal Protection Clause.[1]

Under McCleskey, to prevail on a claim that the administration of the capital punishment system violates the Equal Protection Clause, the petitioner must prove that the decision makers in the petitioner's specific case acted with discriminatory purpose and statistical information about the general administration of the capital punishment system is insufficient to support an inference that any of the decision makers in the case acted with discriminatory purpose.

In response to the McCleskey decision, Congress and several state legislatures, including the North Carolina General Assembly, considered versions of the Racial Justice Act. In 1998, Kentucky became the first state to enact the Racial Justice Act. The North Carolina General Assembly last considered a similar Racial Justice Act during the 2007 Regular Session (House Bill 1291: Racial Justice Act), but did not enact it.

Bill Analysis: Senate Bill 461, the North Carolina Racial Justice Act, provides a process by which statistical evidence could be used to establish that race was the basis for seeking or obtaining the death penalty.

Senate Bill 461 provides that a finding that race was the basis of the decision to seek or impose the death penalty may be established if the court finds that race was a significant factor in decisions to seek or impose the death penalty in the county, the prosecutorial district, or the judicial district, at the time the death penalty was sought or imposed. Evidence relevant to establish a finding that race was a significant factor may include statistical or other evidence, including sworn testimony of members of the criminal justice system that:

- the death penalty was sought or imposed significantly more frequently for persons of one race than for persons of another race
- the death penalty was sought or imposed significantly more frequently as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race; or
- that race was a significant factor in decisions to exercise peremptory challenges during jury selection

[1] Excerpted from Race and the Death Penalty after McCleskey: A Case Study of Kentucky's Racial Justice Act, Washington and Lee Journal of Civil Rights and Social Justice, Fall (2005)

The defendant would have the burden of proving that race was a significant factor in decisions to seek or impose the death penalty in the county, or the judicial district, at the time the death penalty was sought or imposed. The claim could be raised by the defendant at the pretrial conference or in postconviction proceedings, and the court would be required to schedule a hearing on the claim and set a time for the submission of evidence by both parties. If the court finds that race was a significant factor, the court would order that the death penalty not be sought or that a death sentence not be carried out and the defendant resentenced to life imprisonment without parole.

A defendant on death row would be allowed a period of one year from the effective date of the bill to file a motion seeking relief from his or her death sentence upon the ground that racial considerations played a significant part in the decision to seek or impose a death sentence. Except as otherwise specified in the bill, the existing provisions of the State's Criminal Procedure Act regarding procedures and hearing on motions for appropriate relief would apply, including the appointment of counsel for indigent defendants and review upon appeal.

Assistance rendered by a licensed health care professional in the execution of a person sentenced to death may not be the basis for any disciplinary measures by a health care licensing agency, and that the infliction of the death penalty by lethal injection is not to be construed as the practice of medicine.

ASSUMPTIONS AND METHODOLOGY:

General

Fiscal Research requested fiscal impact analysis from the Judicial Branch (the Administrative Office of the Courts and the Office of Indigent Defense) and the Department of Justice on the "Racial Justice Act" (RJA). Because this bill creates a new motion that may be raised by the defense, these agencies do not have historical data from which they can base an estimate of costs or savings. The agencies prepared several possible scenarios and provided the estimated costs and savings for these examples. These scenarios are discussed below.

Judicial Branch - Courts

The Administrative Office of the Courts (AOC) provided Fiscal Research with a fiscal impact analysis for this proposed bill. *AOC reports that they are unable to estimate the fiscal impact of this bill but believe that the impact would be substantial.*

AOC assumes that, according to current case law, largely considering such claims on a constitutional standard, that this bill would greatly expend the ability of defendants to raise and prove the issue of racial disparity in capital cases. Based on an AOC survey of district attorneys, there were 13 first-degree murder cases disposed with death qualified juries (meaning capital trials) during FY 2006-07. AOC does not have this data broken-down by race of the defendant. Based on Department of Correction data, as of April 13, 2009, there were 163 offenders on death row, of which 101 (62%) were non-white.

AOC is unable to predict with any certainty the number of cases in which this issue would be raised. However, it seems all but certain that the issue would be raised in many and probably most first-degree murder cases involving the death penalty. AOC has applied some assumptions to estimate the magnitude of the impact; these estimates are discussed below.

If this issue were raised with respect to 80% of the non-white population there would be 81 cases for which AOC would incur costs. It is possible that the percentage of the non-white population could be greater, and the issue could be raised by white inmates as well, thus increasing the number of potential cases for which AOC would incur a cost.

If, in a given year, for 13 death penalty trials, the non-white proportion is similar to distribution by race on death row (62%) and the issue is raised by 80% of those defendants, there would be seven cases. AOC believes that the number of new cases each year, however, would likely be much greater. The 13 cases on which this estimate is based is the number of capital trials, per year (not necessarily cases). AOC reports that the issue would likely be raised in cases that do not ultimately go to trial with a death qualified jury (raised pretrial). If the number of such cases were to be the same as the number that eventually do become capital trials, the total would be 19 cases.

AOC estimates that costs would come to some $1.8 million, not including costs for appeals, appellate transcripts, and other costs for which no estimates are attempted. These estimates are for all 100 cases, without attempting to distinguish between those that would be heard pretrial versus post-conviction, although some could be both. These costs are itemized below.

Judges, clerks, and court reporters (in-court time only): Although AOC has no readily available data, they estimate that with expert testimony on both sides, rebuttals, etc., it could take an overall average of some two or three court days to litigate the issues (sometimes more time and sometimes less, as for cases where the statistical issues – which would not include jury selection in the given case – are similar or the same as those raised before). That would amount to a need for one Superior Court judge, one court reporter, and one deputy clerk (in-court time at six hours per day for two days, for 100 cases would total 1,200 hours of in-court time, equal to one position – this does not include the time judges would spend on these cases in chambers, which could be considerable). The cost would be $279,633 for the first full year.

Attorney time: Attorney preparation time would be substantial. If attorney preparation time would amount to three times the amount of in-court time, the total hours would be the 1,200 in-court hours, plus 3,600 preparation hours, for a total of 4,800 hours. Since these are capital cases, assuming two attorneys would be appointed (or involved for the State), and assuming the second attorney would only spend half that amount of time (or 2,400 hours), the total hours for both attorneys would come to 7,200 hours.

Prosecutorial time: The Attorney General and not the District Attorneys would handle much of the work (at least for the post-conviction cases). However, even for cases handled by the Attorney General, substantial District Attorney time would be required, since the cases would be litigating prosecutorial practices. At 7,200 hours there would be need for some six positions, or $593,214 in the first year.

Expert witnesses: If the cost for state and defense expert witnesses were to be some $10,000 per case, the cost would be $1,000,000.

The costs for appeals (for defense counsel, the appellate court, production of transcripts, etc.), would also be substantial.

AOC reports that with any cases involving current death row inmates where the court overturned the death sentence and ordered a new trial, the costs for the new trial would be substantial, and if it proceeded on retrial as a capital trial, the costs would be very substantial. On the other hand, to the extent a pretrial hearing resulted in a ruling that causes a case to proceed non-capitally, where it might otherwise have proceed capitally, the subsequent costs for that case would be considerably less.

While these estimates are rough and there is no certainty regarding the time-frame in which the issues might be raised, AOC believes that it is likely that this bill would result in substantial costs to the courts, prosecution, and indigent defense.

Judicial Branch – Office of Indigent Defense Services

The Office of Indigent Defense Services (IDS) reported to Fiscal Research that they are *not able to provide a reliable figure of anticipated costs or savings that would result from the passage of this bill*, however, they believe that *there will likely be substantial costs associated with implementing the bill.* IDS has prepared a scenario of a possible outcome and the cost of this scenario. This scenario is discussed below.

IDS recommends launching a coordinated statewide statistical study by an independent research entity to produce a baseline of data that may be disaggregated for purposes of analyzing racial discrimination claims by county, district, and division. IDS would seek outside sources of funding for the study and thus expects that the underlying statistical analysis that will be needed to support claims under the RJA will be available to defense counsel at no cost.

IDS can not offer a qualified estimate of the number of cases that will be litigated under the RJA before the statewide statistical study is complete. If the statewide study does not demonstrate racial discrimination, IDS does not expect there to be any further litigation under the RJA. If, on the other hand, the study demonstrates substantial racial discrimination, the following analysis attempts to provide some educated guesses about the fiscal impact of this legislation. Because it will not be possible to file claims until after the statewide study is complete, IDS assumes that the associated expenditures and savings will not begin until FY 2010-11.

While prior studies have indicated that the race of the victim is a more significant factor than the race of the defendant in the decision to seek or impose a death sentence, there is no central source of data on the race of the victims of the 163 men and women on North Carolina's death row. Thus, for purposes of this fiscal analysis, IDS assumes that the defendants who are most likely to raise a claim under the RJA will be black defendants who killed white victims. The table below shows the breakdown of the portion of death row defendants by race.

Race of Defendants on Death Row	Number of Defendants on Death Row	Percent of Death Row Population
White	62	38%
Black	88	54%
Indian	9	5.5%
Other	4	2.5%
Total	**163**	**100%**

Source: NC Department of Correction

As shown in the chart above, 54% of North Carolina's death row population is black. IDS assumes that not all black defendants were convicted of killing a white victim, so not all black defendants will raise a claim. However, additional claims may be raised by non-black defendants based on the race of the victim or the composition of the jury. The agency has provided scenarios for costs associated with this bill assuming a finding of statistically significant racial discrimination adding to $128,267 annually for post-conviction work and around $50,000 for pretrial work.

Department of Justice

The Department of Justice (DOJ) reported to Fiscal Research that *the Department anticipates a significant fiscal impact should the proposed bill be passed into law.*

In preparing their analysis, DOJ assumes that the Department will receive requests from the District Attorneys to handle all claims resulting from the RJA for all 162 convicted murders currently on death row

while those claims are pending in the trail court, in addition to the appellate responsibilities that the Attorney General has by statute.

If DOJ's Criminal Division were to have responsibility to handle these claims in the trial court as well as in the appellate courts, the Capital Litigation Section would need five additional Attorney IV's and a Paralegal I at a cost of $549,380 per year.

As the bill is presently written, the RJA allows all current death row inmates regardless of race to file a motion alleging that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the judicial division at the time the death sentence was sought or imposed. Therefore, the RJA goes much further than current case law, *McCleskey v. Kemp,* 481 U.S. 279 (1987), which requires that "to prevail under the *Equal Protection Clause*, [a defendant] must prove that the decision-makers in *his* case acted with discriminatory purpose." *Id.* at 292 (emphasis in original). The RJA provides for relief (vacating the defendant's death sentence to a sentence of life imprisonment without the possibility of parole) if the defendant proves that race was a significant factor in, not necessarily the defendant's own case, but in the decision to seek or impose the sentence of death in other defendants' cases in the county, the prosecutorial district, or the judicial division at the time the death sentence was sought or imposed in the defendant's own case. As such, even non-majority capitally-charged criminal defendants and non-majority current death row defendants, in addition to all minority capitally-charged criminal defendants and minority current death row defendants could challenge their death sentences under the RJA.

Therefore, for purposes of the current fiscal estimates, DOJ assumes that all 162 current death row inmates can, and ultimately will, file motions under the RJA challenging their death sentences. Because the local District Attorneys and their offices may be necessary witnesses to the litigation under the RJA (to testify why they sought the death penalty in specific cases, or whether they implanted any programs prior to the defendant's trial for the purpose of eliminating racial disparities, N.C. General Statute 15A-2011(c), it further is assumed that the local District Attorneys will request the assistance of the Attorney General's Office, specifically the Capital Litigation/Federal Habeas Section, to handle the litigation under the RJA.

Based on the types of evidence that a defendant can use to raise a claim under the RJA, it would take over thirty work days to prepare for and hold a hearing in an average case claiming racial disparity. That work would include:

1. A review of the report prepared by any statistical expert hired by the defense;
2. A review of any factual data collected by the expert;
3. A review of data showing prosecutorial decisions in the county in question, other counties in that district, and other districts in the Judicial Division;
4. Interviews of the District Attorney, Assistant District Attorneys, and any former District Attorney or District Attorneys who handled capital cases during the relevant time period in the county at issue, the district, and any district in the Judicial Division;
5. Consultation with a statistical expert hired by the State to review relevant data
6. Legal research
7. Preparation of motions, responses, and briefs for the trial court level
8. Appearance at a hearing which would take at least several days
9. Preparation of legal documents at the appellate level
10. Appearance at any appellate arguments.

To handle this additional workload, the Capital Litigation Section would need five additional Attorney IVs and an additional Paralegal I.

In a case in Durham County in which the defendant is challenging the death penalty on a basis similar to that in the RJA, the statistical expert hired by the State has already billed the State for $24,000 in time spent, at $150 per hour, just reviewing the defense materials and preparing for a possible hearing. The

hearing has not yet been held. Under the RJA, each case will have different data that defense and prosecution experts will have to consider and evaluate. Thus, it is assumed that similar expense will be required for each of the 163 inmates currently on death row. The total, just for pre-hearing time spent, would certainly be greater than $4,000,000. That amount will not be money that will come from DOJ's budget, however. Orders would be sought in the trial courts to authorize expert expense, and funds to pay those experts would come from the Administrative Office of the Courts.

SOURCES OF DATA: Administrative Office of the Courts; Office of Indigent Defense; Department of Justice

TECHNICAL CONSIDERATIONS: None

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Monday, June 8, 2009

The House Committee on Ways and Means//Broadband Connectivity met on Monday, June 8, 2009, in Room 415 of the Legislative Office Building at 4:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Angela Bryant, Mitch Gillespie, Jim Gulley, Phil Haire, Dewey Hill, Mark Hilton, Sarah Stevens, Joe Tolson, and Winkie Wilkins. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Seitz. House Sergeant-at-Arms assisting: Marvin Lee, Reggie Sills and John Brandon. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, members and visitors. The following bill was placed before the Committee:

Senate Bill 461-A BILL TO BE ENTITLED: an act to provide for the fair and reliable imposition of capital sentences, to ensure that assistance rendered by any health care professional in the process of a lawful execution by the state does not result in disciplinary or corrective action by any state authorized board or authority, to exclude the administration of controlled substances used in an execution from the practice of medicine, to remove the requirement that the Governor and council of state approve the necessary appliances and qualified personnel for the infliction of the punishment of death, and to prohibit the secretary of correction from scheduling more than one execution within a 30-day period. The Chair brought the Committee up to date on exactly where the conversation left off at our last meeting, and then opened the floor for questions and comments. Rep. Haire was recognized for a motion to give a favorable report. At the Committees request roll call was preformed. The vote being seven to five the motion was passed. The Bill, Fiscal Analysis, Proposed Committee Substitute, Sponsor Handouts, Roll Call and Committee Report are attached.. *(Attachment 3)*

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 4:41 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Monday, June 8, 2009
4:00 PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bill**

   1. SB 461 North Carolina Racial Justice Act. Senator McKissick

4. **Adjourn**

VISITOR REGISTRATION SHEET

Ways & means — 6/8/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	[signature]
Jay Ferguson	Durham, NC
Elizabeth A. Ferguson	Durham, NC
Emilie Haertsch	PFADP
CASSANDRA WHITE	NCADC
parker Quett	Gov's office
Tarah Callahan	Durham, NC
Will Durham	FTI
Tom Fewel	PFADP, MVFR
Christopher Hill	ACLU-CAP
Gretchen Engel	Capital Restorative Justice Project

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Glenda Stein	CDPL
Leslie Arnold	SOG - Daily Bulletin
Kevin Kiley	NAO
Josh N. Tharrington	WCSO
JOHN MAXFIELD	WCSO, RALEIGH, N.C.
Sarah Preston	ACLU-NC
Jeff Mixon	Civitas
Lou Russell	CJPC
Paul Pulley	NCAJ

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 3

SENATE BILL 461*
Judiciary I Committee Substitute Adopted 5/12/09
Third Edition Engrossed 5/14/09

Short Title: North Carolina Racial Justice Act. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE FAIR AND RELIABLE IMPOSITION OF CAPITAL SENTENCES, TO ENSURE THAT ASSISTANCE RENDERED BY ANY HEALTH CARE PROFESSIONAL IN THE PROCESS OF A LAWFUL EXECUTION BY THE STATE DOES NOT RESULT IN DISCIPLINARY OR CORRECTIVE ACTION BY ANY STATE AUTHORIZED BOARD OR AUTHORITY, TO EXCLUDE THE ADMINISTRATION OF CONTROLLED SUBSTANCES USED IN AN EXECUTION FROM THE PRACTICE OF MEDICINE, TO REMOVE THE REQUIREMENT THAT THE GOVERNOR AND COUNCIL OF STATE APPROVE THE NECESSARY APPLIANCES AND QUALIFIED PERSONNEL FOR THE INFLICTION OF THE PUNISHMENT OF DEATH, AND TO PROHIBIT THE SECRETARY OF CORRECTION FROM SCHEDULING MORE THAN ONE EXECUTION WITHIN A 30-DAY PERIOD.

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 101.

"North Carolina Racial Justice Act.

"**§ 15A-2010. North Carolina Racial Justice Act.**

No person shall be subject to or given a sentence of death or shall be executed pursuant to any judgment that was sought or obtained on the basis of race.

"**§ 15A-2011. Proof of racial discrimination.**

(a) A finding that race was the basis of the decision to seek or impose a death sentence may be established if the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the judicial division at the time the death sentence was sought or imposed.

(b) Evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the judicial division at the time the death sentence was sought or imposed may include statistical evidence or other evidence, including, but not limited to, sworn testimony of attorneys, prosecutors, law enforcement officers, jurors, or other members of the criminal justice system or both, that irrespective of statutory factors one or more of the following applies:

(1) Death sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race.

(2) Death sentences were sought or imposed significantly more frequently as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race.

(3) Race was a significant factor in decisions to exercise peremptory challenges during jury selection.

A juror's testimony under this subsection shall be consistent with Rule 606(b) of the North Carolina Rules of Evidence, as contained in G.S. 8C-1.

(c) The defendant has the burden of proving that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the judicial division at the time the death sentence was sought or imposed. The State may offer evidence in rebuttal of the claims or evidence of the defendant. The court may consider evidence of any program implemented prior to the defendant's trial for the purpose of eliminating racial disparities in its evaluation of whether the State has adequately addressed those disparities.

"**§ 15A-2012. Hearing procedure.**

(a) The defendant shall state with particularity how the evidence supports a claim that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the judicial division at the time the death sentence was sought or imposed. The claim shall be raised by the defendant at the pretrial conference or in postconviction proceedings. The court shall schedule a hearing on the claim and shall prescribe a time for the submission of evidence by both parties. If the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the judicial division at the time the death sentence was sought or imposed, the court shall order that a death sentence not be sought, or that the death sentence imposed by the judgment shall be vacated and the defendant resentenced to life imprisonment without the possibility of parole.

(b) Notwithstanding any other provision or time limitation contained in Article 89 of Chapter 15A of the General Statutes, a defendant may seek relief from the defendant's death sentence upon the ground that racial considerations played a significant part in the decision to seek or impose a death sentence by filing a motion seeking relief. The motion shall be filed within one year of the effective date of this act.

Except as specifically stated in subsections (a) and (b) of this section, the procedures and hearing on the motion seeking relief from a death sentence upon the ground that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the judicial division at the time the death sentence was sought or imposed, shall follow and comply with G.S. 15A-1420, 15A-1421, and 15A-1422."

SECTION 2. Article 19 of Chapter 15 of the General Statutes is amended by adding a new section to read:

"**§ 15-188.1. Health care professional assistance.**

(a) Any assistance rendered with an execution under this Article by any licensed health care professional, including, but not limited to, physicians, nurses, and pharmacists shall not be cause for any disciplinary or corrective measures by any board, commission, or other authority created by the State or governed by State law which oversees or regulates the practice of health care professionals, including, but not limited to, the North Carolina Medical Board, the North Carolina Board of Nursing, and the North Carolina Board of Pharmacy.

(b) The infliction of the punishment of death by administration of the required lethal substances under this Article shall not be construed to be the practice of medicine."

SECTION 3. G.S. 15-188 reads as rewritten:

"**§ 15-188. Manner and place of execution.**

In accordance with G.S. 15-187, the mode of executing a death sentence must in every case be by administering to the convict or felon a lethal quantity of an ultrashort-acting barbiturate

in combination with a chemical paralytic agent until the convict or felon is dead; and when any person, convict or felon shall be sentenced by any court of the State having competent jurisdiction to be so executed, the punishment shall only be inflicted within a permanent death chamber which the superintendent of the State penitentiary is hereby authorized and directed to provide within the walls of the North Carolina penitentiary at Raleigh, North Carolina. The superintendent of the State penitentiary shall also cause to be provided, in conformity with this ~~Article and approved by the Governor and Council of State,~~Article, the necessary appliances for the infliction of the punishment of death and qualified personnel to set up and prepare the injection, administer the preinjections, insert the IV catheter, and to perform other tasks required for this procedure in accordance with the requirements of this Article."

SECTION 4. G.S. 15-194 reads as rewritten:

"**§ 15-194. Time for execution.**

In sentencing a capital defendant to a death sentence pursuant to G.S. 15A-2000(b), the sentencing judge need not specify the date and time the execution is to be carried out by the Department of Correction. The Secretary of Correction shall immediately schedule a date for the execution of the original death sentence not less than 30 days nor more than 60 days from the date of receiving written notification from the Attorney General of North Carolina or the district attorney who prosecuted the case of any one of the following:

(1) The United States Supreme Court has filed an opinion upholding the sentence of death following completion of the initial State and federal postconviction proceedings, if any;

(2) The mandate issued by the Supreme Court of North Carolina on direct appeal pursuant to N.C.R. App. P. 32(b) affirming the capital defendant's death sentence and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;

(3) The capital defendant, if indigent, failed to timely seek the appointment of counsel pursuant to G.S. 7A-451(c), or failed to file a timely motion for appropriate relief as required by G.S. 15A-1415(a);

(4) The superior court denied the capital defendant's motion for appropriate relief, but the capital defendant failed to file a timely petition for writ of certiorari to the Supreme Court of North Carolina pursuant to N.C.R. App. P. 21(f);

(5) The Supreme Court of North Carolina denied the capital defendant's petition for writ of certiorari pursuant to N.C.R. App. P. 21(f), or, if certiorari was granted, upheld the capital defendant's death sentence, but the capital defendant failed to file a timely petition for writ of certiorari to the United States Supreme Court; or

(6) Following State postconviction proceedings, if any, the capital defendant failed to file a timely petition for writ of habeas corpus in the appropriate federal district court, or failed to timely appeal or petition an adverse habeas corpus decision to the United States Court of Appeals for the Fourth Circuit or the United States Supreme Court.

The Secretary shall not schedule the date for the execution to occur within 30 days of any other scheduled execution. The Secretary shall send a certified copy of the document fixing the date to the clerk of superior court of the county in which the case was tried or, if venue was changed, in which the defendant was indicted. The certified copy shall be recorded in the minutes of the court. The Secretary shall also send certified copies to the capital defendant, the capital defendant's attorney, the district attorney who prosecuted the case, and the Attorney General of North Carolina."

SECTION 5. Section 1 of this act is effective when it becomes law and applies retroactively. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2009

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: June 2, 2009

TO: Representative Stam

FROM: Danielle Seale & Douglas Holbrook, Fiscal Research Division

RE: Senate Bill 461 (Third Edition)

FISCAL IMPACT

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

	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14
EXPENDITURES GENERAL FUND					
Judicial - AOC	**Exact amount cannot be determined.**				
Judicial – IDS					
Justice	**Could be as high as $549,380 per year**				
POSITIONS: (cumulative)	**Could require 6 additional positions (DOJ)**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch; Department of Justice

EFFECTIVE DATE: Section 1 of this act is effective when it becomes law and applies retroactively. The remainder of this act is effective when it becomes law.

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY:

Current Law: In 1987, the United States Supreme Court decided the case of *McCleskey v. Kemp*. In that case, a black male defendant was convicted of two counts of armed robbery and murder in the state of Georgia. The victim was a white male. McCleskey sought relief from his death sentence on the basis that the Georgia sentencing process was administered in a racially discriminatory manner in violation of the Equal Protection Clause of the United States Constitution. McCleskey supported his claim with a statistical study indicating that the death penalty in Georgia was imposed more often on black defendants and killers of white victims than on white defendants and killers of black victims. McCleskey argued that the study indicated that black defendants who killed white victims had the greatest likelihood of receiving the death penalty. In an opinion authored by Justice Lewis Powell, the majority rejected McCleskey's claims, stating that the study failed to establish that any of the decision makers in McCleskey's specific case acted with discriminatory purpose in violation of the Equal Protection Clause.[1]

Under McCleskey, to prevail on a claim that the administration of the capital punishment system violates the Equal Protection Clause, the petitioner must prove that the decision makers in the petitioner's specific case acted with discriminatory purpose and statistical information about the general administration of the capital punishment system is insufficient to support an inference that any of the decision makers in the case acted with discriminatory purpose.

In response to the McCleskey decision, Congress and several state legislatures, including the North Carolina General Assembly, considered versions of the Racial Justice Act. In 1998, Kentucky became the first state to enact the Racial Justice Act. The North Carolina General Assembly last considered a similar Racial Justice Act during the 2007 Regular Session (House Bill 1291: Racial Justice Act), but did not enact it.

Bill Analysis: Senate Bill 461, the North Carolina Racial Justice Act, provides a process by which statistical evidence could be used to establish that race was the basis for seeking or obtaining the death penalty.

Senate Bill 461 provides that a finding that race was the basis of the decision to seek or impose the death penalty may be established if the court finds that race was a significant factor in decisions to seek or impose the death penalty in the county, the prosecutorial district, or the judicial district, at the time the death penalty was sought or imposed. Evidence relevant to establish a finding that race was a significant factor may include statistical or other evidence, including sworn testimony of members of the criminal justice system that:

- the death penalty was sought or imposed significantly more frequently for persons of one race than for persons of another race
- the death penalty was sought or imposed significantly more frequently as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race; or
- that race was a significant factor in decisions to exercise peremptory challenges during jury selection

[1] Excerpted from Race and the Death Penalty after McCleskey: A Case Study of Kentucky's Racial Justice Act, Washington and Lee Journal of Civil Rights and Social Justice, Fall (2005)

The defendant would have the burden of proving that race was a significant factor in decisions to seek or impose the death penalty in the county, or the judicial district, at the time the death penalty was sought or imposed. The claim could be raised by the defendant at the pretrial conference or in postconviction proceedings, and the court would be required to schedule a hearing on the claim and set a time for the submission of evidence by both parties. If the court finds that race was a significant factor, the court would order that the death penalty not be sought or that a death sentence not be carried out and the defendant resentenced to life imprisonment without parole.

A defendant on death row would be allowed a period of one year from the effective date of the bill to file a motion seeking relief from his or her death sentence upon the ground that racial considerations played a significant part in the decision to seek or impose a death sentence. Except as otherwise specified in the bill, the existing provisions of the State's Criminal Procedure Act regarding procedures and hearing on motions for appropriate relief would apply, including the appointment of counsel for indigent defendants and review upon appeal.

Assistance rendered by a licensed health care professional in the execution of a person sentenced to death may not be the basis for any disciplinary measures by a health care licensing agency, and that the infliction of the death penalty by lethal injection is not to be construed as the practice of medicine.

ASSUMPTIONS AND METHODOLOGY:

General

Fiscal Research requested fiscal impact analysis from the Judicial Branch (the Administrative Office of the Courts and the Office of Indigent Defense) and the Department of Justice on the "Racial Justice Act" (RJA). Because this bill creates a new motion that may be raised by the defense, these agencies do not have historical data from which they can base an estimate of costs or savings. The agencies prepared several possible scenarios and provided the estimated costs and savings for these examples. These scenarios are discussed below.

Judicial Branch - Courts

The Administrative Office of the Courts (AOC) provided Fiscal Research with a fiscal impact analysis for this proposed bill. *AOC reports that they are unable to estimate the fiscal impact of this bill but believe that the impact would be substantial.*

AOC assumes that, according to current case law, largely considering such claims on a constitutional standard, that this bill would greatly expend the ability of defendants to raise and prove the issue of racial disparity in capital cases. Based on an AOC survey of district attorneys, there were 13 first-degree murder cases disposed with death qualified juries (meaning capital trials) during FY 2006-07. AOC does not have this data broken-down by race of the defendant. Based on Department of Correction data, as of April 13, 2009, there were 163 offenders on death row, of which 101 (62%) were non-white.

AOC is unable to predict with any certainty the number of cases in which this issue would be raised. However, it seems all but certain that the issue would be raised in many and probably most first-degree murder cases involving the death penalty. AOC has applied some assumptions to estimate the magnitude of the impact; these estimates are discussed below.

If this issue were raised with respect to 80% of the non-white population there would be 81 cases for which AOC would incur costs. It is possible that the percentage of the non-white population could be greater, and the issue could be raised by white inmates as well, thus increasing the number of potential cases for which AOC would incur a cost.

If, in a given year, for 13 death penalty trials, the non-white proportion is similar to distribution by race on death row (62%) and the issue is raised by 80% of those defendants, there would be seven cases. AOC believes that the number of new cases each year, however, would likely be much greater. The 13 cases on which this estimate is based is the number of capital trials, per year (not necessarily cases). AOC reports that the issue would likely be raised in cases that do not ultimately go to trial with a death qualified jury (raised pretrial). If the number of such cases were to be the same as the number that eventually do become capital trials, the total would be 19 cases.

AOC estimates that costs would come to some $1.8 million, not including costs for appeals, appellate transcripts, and other costs for which no estimates are attempted. These estimates are for all 100 cases, without attempting to distinguish between those that would be heard pretrial versus post-conviction, although some could be both. These costs are itemized below.

Judges, clerks, and court reporters (in-court time only): Although AOC has no readily available data, they estimate that with expert testimony on both sides, rebuttals, etc., it could take an overall average of some two or three court days to litigate the issues (sometimes more time and sometimes less, as for cases where the statistical issues – which would not include jury selection in the given case – are similar or the same as those raised before). That would amount to a need for one Superior Court judge, one court reporter, and one deputy clerk (in-court time at six hours per day for two days, for 100 cases would total 1,200 hours of in-court time, equal to one position – this does not include the time judges would spend on these cases in chambers, which could be considerable). The cost would be $279,633 for the first full year.

Attorney time: Attorney preparation time would be substantial. If attorney preparation time would amount to three times the amount of in-court time, the total hours would be the 1,200 in-court hours, plus 3,600 preparation hours, for a total of 4,800 hours. Since these are capital cases, assuming two attorneys would be appointed (or involved for the State), and assuming the second attorney would only spend half that amount of time (or 2,400 hours), the total hours for both attorneys would come to 7,200 hours.

Prosecutorial time: The Attorney General and not the District Attorneys would handle much of the work (at least for the post-conviction cases). However, even for cases handled by the Attorney General, substantial District Attorney time would be required, since the cases would be litigating prosecutorial practices. At 7,200 hours there would be need for some six positions, or $593,214 in the first year.

Expert witnesses: If the cost for state and defense expert witnesses were to be some $10,000 per case, the cost would be $1,000,000.

The costs for appeals (for defense counsel, the appellate court, production of transcripts, etc.), would also be substantial.

AOC reports that with any cases involving current death row inmates where the court overturned the death sentence and ordered a new trial, the costs for the new trial would be substantial, and if it proceeded on retrial as a capital trial, the costs would be very substantial. On the other hand, to the extent a pretrial hearing resulted in a ruling that causes a case to proceed non-capitally, where it might otherwise have proceed capitally, the subsequent costs for that case would be considerably less.

While these estimates are rough and there is no certainty regarding the time-frame in which the issues might be raised, AOC believes that it is likely that this bill would result in substantial costs to the courts, prosecution, and indigent defense.

Judicial Branch – Office of Indigent Defense Services

The Office of Indigent Defense Services (IDS) reported to Fiscal Research that they are *not able to provide a reliable figure of anticipated costs or savings that would result from the passage of this bill*, however, they believe that *there will likely be substantial costs associated with implementing the bill.* IDS has prepared a scenario of a possible outcome and the cost of this scenario. This scenario is discussed below.

IDS recommends launching a coordinated statewide statistical study by an independent research entity to produce a baseline of data that may be disaggregated for purposes of analyzing racial discrimination claims by county, district, and division. IDS would seek outside sources of funding for the study and thus expects that the underlying statistical analysis that will be needed to support claims under the RJA will be available to defense counsel at no cost.

IDS can not offer a qualified estimate of the number of cases that will be litigated under the RJA before the statewide statistical study is complete. If the statewide study does not demonstrate racial discrimination, IDS does not expect there to be any further litigation under the RJA. If, on the other hand, the study demonstrates substantial racial discrimination, the following analysis attempts to provide some educated guesses about the fiscal impact of this legislation. Because it will not be possible to file claims until after the statewide study is complete, IDS assumes that the associated expenditures and savings will not begin until FY 2010-11.

While prior studies have indicated that the race of the victim is a more significant factor than the race of the defendant in the decision to seek or impose a death sentence, there is no central source of data on the race of the victims of the 163 men and women on North Carolina's death row. Thus, for purposes of this fiscal analysis, IDS assumes that the defendants who are most likely to raise a claim under the RJA will be black defendants who killed white victims. The table below shows the breakdown of the portion of death row defendants by race.

Race of Defendants on Death Row	Number of Defendants on Death Row	Percent of Death Row Population
White	62	38%
Black	88	54%
Indian	9	5.5%
Other	4	2.5%
Total	**163**	**100%**

Source: NC Department of Correction

As shown in the chart above, 54% of North Carolina's death row population is black. IDS assumes that not all black defendants were convicted of killing a white victim, so not all black defendants will raise a claim. However, additional claims may be raised by non-black defendants based on the race of the victim or the composition of the jury. The agency has provided scenarios for costs associated with this bill assuming a finding of statistically significant racial discrimination adding to $128,267 annually for post-conviction work and around $50,000 for pretrial work.

Department of Justice

The Department of Justice (DOJ) reported to Fiscal Research that *the Department anticipates a significant fiscal impact should the proposed bill be passed into law.*

In preparing their analysis, DOJ assumes that the Department will receive requests from the District Attorneys to handle all claims resulting from the RJA for all 162 convicted murders currently on death row

while those claims are pending in the trail court, in addition to the appellate responsibilities that the Attorney General has by statute.

If DOJ's Criminal Division were to have responsibility to handle these claims in the trial court as well as in the appellate courts, the Capital Litigation Section would need five additional Attorney IV's and a Paralegal I at a cost of $549,380 per year.

As the bill is presently written, the RJA allows all current death row inmates regardless of race to file a motion alleging that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the judicial division at the time the death sentence was sought or imposed. Therefore, the RJA goes much further than current case law, *McCleskey v. Kemp,* 481 U.S. 279 (1987), which requires that "to prevail under the *Equal Protection Clause*, [a defendant] must prove that the decision-makers in *his* case acted with discriminatory purpose." *Id.* at 292 (emphasis in original). The RJA provides for relief (vacating the defendant's death sentence to a sentence of life imprisonment without the possibility of parole) if the defendant proves that race was a significant factor in, not necessarily the defendant's own case, but in the decision to seek or impose the sentence of death in other defendants' cases in the county, the prosecutorial district, or the judicial division at the time the death sentence was sought or imposed in the defendant's own case. As such, even non-majority capitally-charged criminal defendants and non-majority current death row defendants, in addition to all minority capitally-charged criminal defendants and minority current death row defendants could challenge their death sentences under the RJA.

Therefore, for purposes of the current fiscal estimates, DOJ assumes that all 162 current death row inmates can, and ultimately will, file motions under the RJA challenging their death sentences. Because the local District Attorneys and their offices may be necessary witnesses to the litigation under the RJA (to testify why they sought the death penalty in specific cases, or whether they implanted any programs prior to the defendant's trial for the purpose of eliminating racial disparities, N.C. General Statute 15A-2011(c), it further is assumed that the local District Attorneys will request the assistance of the Attorney General's Office, specifically the Capital Litigation/Federal Habeas Section, to handle the litigation under the RJA.

Based on the types of evidence that a defendant can use to raise a claim under the RJA, it would take over thirty work days to prepare for and hold a hearing in an average case claiming racial disparity. That work would include:

1. A review of the report prepared by any statistical expert hired by the defense;
2. A review of any factual data collected by the expert;
3. A review of data showing prosecutorial decisions in the county in question, other counties in that district, and other districts in the Judicial Division;
4. Interviews of the District Attorney, Assistant District Attorneys, and any former District Attorney or District Attorneys who handled capital cases during the relevant time period in the county at issue, the district, and any district in the Judicial Division;
5. Consultation with a statistical expert hired by the State to review relevant data
6. Legal research
7. Preparation of motions, responses, and briefs for the trial court level
8. Appearance at a hearing which would take at least several days
9. Preparation of legal documents at the appellate level
10. Appearance at any appellate arguments.

To handle this additional workload, the Capital Litigation Section would need five additional Attorney IVs and an additional Paralegal I.

In a case in Durham County in which the defendant is challenging the death penalty on a basis similar to that in the RJA, the statistical expert hired by the State has already billed the State for $24,000 in time spent, at $150 per hour, just reviewing the defense materials and preparing for a possible hearing. The

hearing has not yet been held. Under the RJA, each case will have different data that defense and prosecution experts will have to consider and evaluate. Thus, it is assumed that similar expense will be required for each of the 163 inmates currently on death row. The total, just for pre-hearing time spent, would certainly be greater than $4,000,000. That amount will not be money that will come from DOJ's budget, however. Orders would be sought in the trial courts to authorize expert expense, and funds to pay those experts would come from the Administrative Office of the Courts.

SOURCES OF DATA: Administrative Office of the Courts; Office of Indigent Defense; Department of Justice

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 461*
Judiciary I Committee Substitute Adopted 5/12/09
Third Edition Engrossed 5/14/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S461-CSRV-46 [v.2]

6/3/2009 10:32:11 AM

Short Title: North Carolina Racial Justice Act. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT SEEKING OR IMPOSING THE DEATH PENALTY ON THE BASIS OF RACE; TO ESTABLISH A PROCESS BY WHICH RELEVANT EVIDENCE MAY BE USED TO ESTABLISH THAT RACE WAS A SIGNIFICANT FACTOR IN SEEKING OR IMPOSING THE DEATH PENALTY WITHIN THE COUNTY, THE PROSECUTORIAL DISTRICT, THE JUDICIAL DIVISION OR THE STATE, TO IDENTIFY TYPES OF EVIDENCE THAT MAY BE CONSIDERED BY THE COURT WHEN CONSIDERING WHETHER RACE WAS A BASIS FOR SEEKING OR IMPOSING THE DEATH PENALTY, INCLUDING STATISTICAL EVIDENCE, AND TO AUTHORIZE THE DEFENDANT TO RAISE THIS CLAIM AT THE PRETRIAL CONFERENCE OR IN POSTCONVICTION PROCEEDINGS; TO PROVIDE THAT THE DEFENDANT HAS THE BURDEN OF PROVING THAT RACE WAS A SIGNIFICANT FACTOR IN SEEKING OR IMPOSING THE DEATH PENALTY AND TO PROVIDE THAT THE STATE MAY OFFER EVIDENCE TO REBUT THE CLAIMS OR EVIDENCE OF THE DEFENDANT AND IN DOING SO TO USE STATISTICAL EVIDENCE AS WELL AS ANY OTHER EVIDENCE THE COURT DEEMS RELEVANT AND MATERIAL; TO PROVIDE THAT IF RACE IS FOUND TO BE A SIGNIFICANT FACTOR IN THE IMPOSITION OF THE DEATH PENALTY THE DEATH SENTENCE SHALL BE VACATED AND THE DEFENDANT RESENTENCED TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE; TO PROVIDE THAT THIS ACT IS EFFECTIVE WHEN IT BECOMES LAW AND APPLIES RETROACTIVELY, THAT MOTIONS UNDER THIS ACT FOR THOSE CURRENTLY UNDER A DEATH SENTENCE SHALL BE FILED WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS ACT, AND THAT MOTIONS FOR THOSE WHOSE DEATH SENTENCE IS IMPOSED ON OR AFTER THE EFFECTIVE DATE OF THIS ACT SHALL BE FILED AS PROVIDED IN THIS ACT.

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 101.

"North Carolina Racial Justice Act.

"**§ 15A-2010. North Carolina Racial Justice Act.**

No person shall be subject to or given a sentence of death or shall be executed pursuant to any judgment that was sought or obtained on the basis of race.

"**§ 15A-2011. Proof of racial discrimination.**

(a) A finding that race was the basis of the decision to seek or impose a death sentence may be established if the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed.

(b) Evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed may include statistical evidence or other evidence, including, but not limited to, sworn testimony of attorneys, prosecutors, law enforcement officers, jurors, or other members of the criminal justice system or both, that irrespective of statutory factors one or more of the following applies:

(1) Death sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race.

(2) Death sentences were sought or imposed significantly more frequently as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race.

(3) Race was a significant factor in decisions to exercise peremptory challenges during jury selection.

A juror's testimony under this subsection shall be consistent with Rule 606(b) of the North Carolina Rules of Evidence, as contained in G.S. 8C-1.

(c) The defendant has the burden of proving that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed. The State may offer evidence in rebuttal of the claims or evidence of the defendant, including statistical evidence. The court may consider evidence of the impact upon the defendant's trial of any program the purpose of which is to eliminate race as a factor in seeking or imposing a sentence of death.

"**§ 15A-2012. Hearing procedure.**

(a) The defendant shall state with particularity how the evidence supports a claim that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed. The claim shall be raised by the defendant at the pretrial conference or in postconviction proceedings. The court shall schedule a hearing on the claim and shall prescribe a time for the submission of evidence by both parties. If the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed, the court shall order that a death sentence not be sought, or that the death sentence imposed by the judgment shall be vacated and the defendant resentenced to life imprisonment without the possibility of parole.

(b) Notwithstanding any other provision or time limitation contained in Article 89 of Chapter 15A of the General Statutes, a defendant may seek relief from the defendant's death sentence upon the ground that racial considerations played a significant part in the decision to seek or impose a death sentence by filing a motion seeking relief.

Except as specifically stated in subsections (a) and (b) of this section, the procedures and hearing on the motion seeking relief from a death sentence upon the ground that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed, shall follow and comply with G.S. 15A-1420, 15A-1421, and 15A-1422."

SECTION 2. This act is effective when it becomes law and applies retroactively. For persons under a death sentence imposed before the effective date of this act, motions under this act shall be filed within one year of the effective date of this act; for persons whose death sentence is imposed on or after the effective date of this act, motions shall be filed as provided in this act.

ROLL CALL VOTE

7 YES 5 NO = 12(TOTAL) HB# ____ SB# 461

HOUSE STANDING COMMITTEE ON **Ways and Means Broadband Connectivity**

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
X		**Faison**, Bill, Chairman	—	—	
X		**Coates**, Lorene, Vice Chair	—	—	
	X	**Tillis**, Thom, Vice Chair	—	—	
	—	**Alexander**, Kelly	—	—	
	—	**Allen**, Lucy	—	—	
X		**Bryant**, Angela	—	—	
	X	**Gillespie**, Mitch	—	—	
	X	**Gulley**, Jim	—	—	
X		**Haire**, Phil	—	—	
X		**Hill**, Dewey	—	—	
	X	**Hilton**, Mark	—	—	
	X	**Stevens**, Sarah	—	—	
X		**Tolson**, Joe	—	—	
X		**Wilkins**, Winkie	—	—	
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—	—		Ex officio Members		
—	—		—	—	Speaker Pro Tem
—	—		—	—	Majority Leader
—	—		—	—	Majority Whip

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 461 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE FAIR AND RELIABLE IMPOSITION OF CAPITAL SENTENCES, TO ENSURE THAT ASSISTANCE RENDERED BY ANY HEALTH CARE PROFESSIONAL IN THE PROCESS OF A LAWFUL EXECUTION BY THE STATE DOES NOT RESULT IN DISCIPLINARY OR CORRECTIVE ACTION BY ANY STATE AUTHORIZED BOARD OR AUTHORITY, TO EXCLUDE THE ADMINISTRATION OF CONTROLLED SUBSTANCES USED IN AN EXECUTION FROM THE PRACTICE OF MEDICINE, TO REMOVE THE REQUIREMENT THAT THE GOVERNOR AND COUNCIL OF STATE APPROVE THE NECESSARY APPLIANCES AND QUALIFIED PERSONNEL FOR THE INFLICTION OF THE PUNISHMENT OF DEATH, AND TO PROHIBIT THE SECRETARY OF CORRECTION FROM SCHEDULING MORE THAN ONE EXECUTION WITHIN A 30-DAY PERIOD.

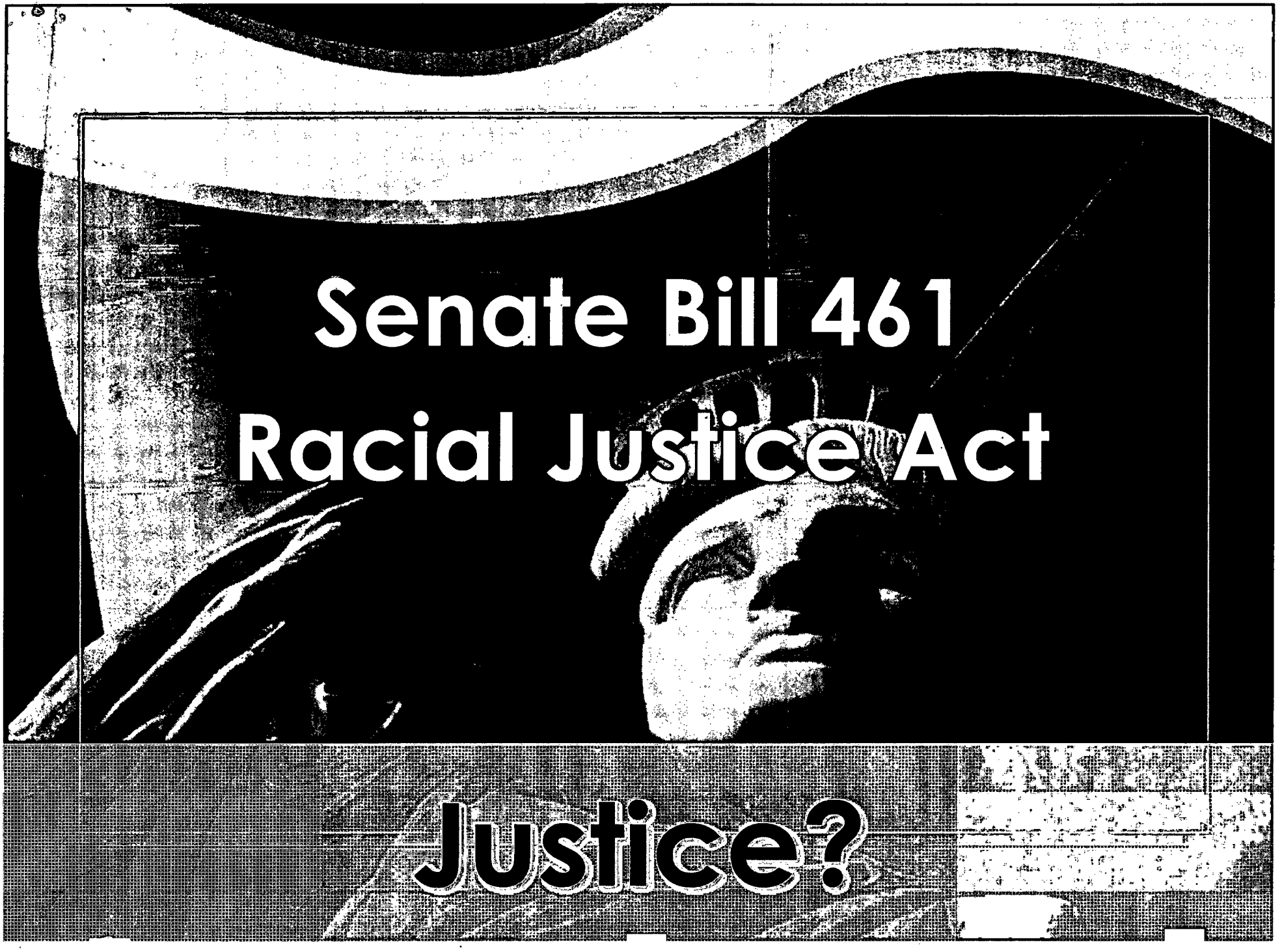
☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill and recommendation that the House committee substitute bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

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

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


Senate Bill 461
Racial Justice Act
Justice?

1,195 Crimes: 270 murders, 58 rapes, 40 kidnappings, 3 child rape/ abuse

SB 461: Racial Justice Act "Benefactors":

- **163 inmates are currently on death row in North Carolina** (See Photos – Pages 8-12)
- **All 163 were convicted for first degree murder of one or more victims.** (CLICK this link for detail)
- **Collectively, NC death row inmates are guilty of 1,195 crimes*:**
  - 270 murders
  - 58 rapes
  - 40 kidnappings
  - 190 armed robberies and B&E
  - 3 child rape or child abuse
  - 546 other crimes (felonies and misdemeanors)

*SOURCE: NC Department of Correction @ http://www.doc.state.nc.us/DOP/deathpenalty/deathrow.htm

Fiscal Problems with SB 461

Senate Bill 461: Racial Justice Act

- **Will redirect funding (potentially millions) from the courts and prisons to help first degree murderers vacate their death sentences.**

William P. Hart, Senior Deputy Attorney General Criminal Division (May 27, 2009)

"If the Criminal Division were to have responsibility to handle these claims in the trial court as well as in the appellate courts, the Capital Litigation Section would need five additional Attorney IVs and a Paralegal I. In addition, there would be costs to the State for hiring of experts in statistics that would need to be hired to examine data collected by defense experts, to review statistical reports that result from analysis of that data by defense experts, to consult with the State's attorneys, to prepare reports, and to testify in court, costs which could well exceed $4,000,000.00."

Administrative Office of the Courts/AOC (May 2009)

"Estimated costs: would come to some $2.5 million, not including costs for appeals, appellate transcripts, and other costs for which no estimates are attempted below. These estimates are for all 100 cases, without attempting to distinguish between those that would be heard pretrial versus post-conviction, although some could be both...While these estimates are rough (and there is no certainty regarding the time-frame in which the issues might be raised -- certainly not all in one year), it seems likely that this bill would result in substantial costs to the courts, prosecution, and indigent defense, much of which would not be for court employees (and could not be "absorbed," such as for private defense counsel, expert witnesses, and production of transcripts).

General Problems with SB 461

Senate Bill 461: Racial Justice Act

- Will created an added burden to the current comprehensive review process required for capital cases.
- Will deny or delay justice for victims of murder and their loved ones.
- Will increase the risk to the prison population and prison employees.
- Will not deal with innocence—only the opportunity to allow persons guilty of murder to get off death row.

Existing framework is just

Current Process / Law

- The average time between conviction and when the execution is carried out is 8 to 15 years.
- Capital cases are reviewed by 47 judges (State and Federal) to assess any claims of error in the trail or claims of innocence.
- A defendant may argue and win a claim of racial discrimination under current law.
- The Supreme Court of North Carolina reviews all death penalty cases on direct appeal for proportionality to other similar cases.
- Capital defendants have the right to complete post-conviction discovery, and may use such discovery to claim the prosecution failed to disclose evidence the defendant believed to be important, including racial discrimination.
- Indigent defendants facing the death penalty are appointed two trail attorneys, and, capital defendants are provided two attorneys in all post-conviction hearings (all at taxpayer's expense).

Current Protections

- The Innocence Inquiry Commission was specifically established to insure convicted persons have every avenue of relief to prove he or she is factually innocent. (Adopted 2006)
- Pre-trial and post-trial DNA testing is allowed to prevent the conviction of the innocent. (INNOCENCE PROTECTION ACT 2001).
- State law now prohibits the death penalty for the mentally retarded. (Adopted 2001)
- Prosecutors have authority to use discretion in deciding NOT to seek the death penalty. (Adopted 2001)

Conclusion

Current Law is Just and Sufficient

- Current law is more than fair and just in addressing discrimination concerns.
- SB 461 benefits the worst-of-the-worst criminals in North Carolina. SB 461 Racial Justice Act does not advance the cause of justice.
- The cost to provide the added protections for convicted murderers will be at the expense of millions of dollars that should go to funding for our courts and prisons, not to benefit convicted first degree murderers.

1,195 Crimes: 270 murders, 58 rapes,
40 kidnappings, 3 child rape/abuse



These are the "benefactors" of Senate Bill 461

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40 kidnappings, 3 child rape/ abuse

These are the "benefactors" of Senate Bill 461

North Carolina Death Row Inmates (as of June 8, 2009)

CLICK this link to view the Dept. of Correction website/source

Year Committed	Number of Years	View Picture / Details	Last Name	SEX	RACE	County of Conviction	Murder	Man-slaughter	Rape	Assault	Robbery w/ Dangerous Weapon	Robbery / Felony B&E	Kid-napping	Child Rape/ Child Abuse	Misc	Total
Collective Devastation of Death Row Inmates:							**270**	**7**	**58**	**81**	**102**	**88**	**40**	**3**	**546**	**1195**
1/29/1997	12	422350	Wallace	M	B	Mecklenburg	9		13		5				5	32
5/19/1992	17	347839	Robinson	M	B	Bladen	6									6
10/17/2007	2	604251	Phillips	M	B	Moore	5			1			1		4	11
5/10/1996	13	376917	Smith	M	B	Buncombe	4	1			1	1			8	15
10/8/2003	6	133102	Forte	M	B	Wayne	3		3	2					17	25
11/4/1997	12	488288	Mitchell	M	B	Wake	3					2			1	6
11/21/1997	12	43529	Braxton	M	B	Halifax	3			8					8	19
7/8/1999	10	291861	Morgan	M	B	Buncombe	3			2						5
3/19/2001	8	486636	Carter	M	B	New Hanover	3				1		1		12	17
3/5/1998	11	599379	Williams	M	B	Wake	2		4	4						10
5/18/1993	16	156518	Gregory	M	B	Pitt	2		2				2		5	11
7/22/1995	14	180479	Herring	M	B	Wake	2		2							4
11/22/1991	18	265106	McCollum	M	B	Cumberland	2		1							3
6/7/1993	16	30124	Best	M	B	Columbus	2		1	1	1	1			5	11
2/24/1995	14	404386	Thomas	M	B	Wake	2		1							3
2/5/1993	16	39561	Bowie	M	B	Catawba	2									2
2/5/1993	16	39569	Bowie	M	B	Catawba	2									2
4/28/1993	16	104984	Decastro	M	B	Johnston	2	1			1	1			6	11
6/1/1993	16	21418	Barrett	M	B	Northampton	2									2
11/20/1993	16	149506	Goode	M	B	Harnett	2				1					3

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Collective Devastation of Death Row Inmates:							**270**	**7**	**58**	**81**	**102**	**88**	**40**	**3**	**546**	**1195**
3/10/1994	15	71799	Chambers	M	B	Rowan	2				4	1			5	12
3/10/1994	15	20590	Barnes	M	B	Rowan	2				2	2			9	15
6/14/1994	15	82151	Cole	M	B	Camden	2	2								4
8/12/1994	15	166056	Harden	M	B	Mecklenburg	2					4			2	8
1/25/1995	14	443375	Williams	M	B	Wayne	2					4	1		2	9
11/8/1995	14	511998	East	M	B	Surry	2				1	1				4
2/21/1996	13	413011	Tucker	M	B	Forsyth	2			2	1				1	6
4/26/1996	13	238344	LeGrande	M	B	Stanly	2								2	4
9/27/1996	13	37215	Bonnett	M	B	Martin	2			1	1				2	6
10/15/1996	13	434355	White	M	B	Craven	2					2			5	9
8/15/1994	15	156529	Gregory	M	B	Davie	2			2		2				6
2/18/1997	12	539901	Taylor	M	B	Lenoir	2									2
8/22/1997	12	585797	Davis	M	B	Buncombe	2									2
11/18/1997	12	552017	Moses	M	B	Forsyth	2									2
12/11/1997	12	597164	Lawrence	M	B	Harnett	2					1	2			5
5/13/1998	11	590940	Golphin	M	B	Cumberland	2			1	2				2	7
11/23/1998	11	226428	King	M	B	Guilford	2									2
11/18/1999	10	670167	Nicholson	M	B	Wilson	2									2
5/17/2000	9	688223	Squires	M	B	Pitt	2									2
9/8/2000	9	189289	Holmes	M	B	Johnston	2			1					8	11

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Collective Devastation of Death Row Inmates:							**270**	**7**	**58**	**81**	**102**	**88**	**40**	**3**	**546**	**1195**
6/14/2003	6	290634	Moore	M	B	Davie	2			2	2				10	16
5/1/2007	2	441044	Williams	M	B	Cumberland	2			1		2			9	14
5/18/1999	10	125241	Fair	M	B	Wake	1		2		1				1	5
3/25/1992	17	353186	Rouse	M	B	Randolph	1		1		1					3
4/1/1993	16	57308	Burkes	M	B	Iredell	1		1			1			11	14
7/23/1996	13	440399	Williams	M	B	Bertie	1		1	3		2			4	11
8/29/1997	12	352024	Roseboro	M	B	Gaston	1		1			1			1	4
10/26/1999	10	7328	Anderson	M	B	Craven	1		1	2	2				3	9
11/22/1993	16	343075	Richardson	M	B	Union	1				1		1			3
4/29/1994	15	453231	Wooten	M	B	Pitt	1			3					6	10
8/5/1994	15	348505	Robinson	M	B	Cumberland	1			3	1		1		13	19
9/29/1994	15	143501	Geddie	M	B	Johnston	1			3	1	1			7	13
2/9/1995	14	478925	Stroud	M	B	Durham	1									1
3/24/1995	14	36850	Bond	M	B	Bertie	1				1		2			4
4/28/1995	14	233526	Larry	M	B	Forsyth	1				4	1			7	13
5/22/1995	14	497100	Woods	M	B	Forsyth	1			1					2	4
6/1/1995	14	492102	Richardson	M	B	Nash	1						1			2
11/10/1995	14	275678	McNeil	M	B	Cumberland	1					1			1	3
11/14/1995	14	414853	Tyler	M	B	Hertford	1								2	3
2/26/1996	13	495163	Neal	M	B	Rockingham	1								1	2

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Collective Devastation of Death Row Inmates:							**270**	**7**	**58**	**81**	**102**	**88**	**40**	**3**	**546**	**1195**
8/9/1996	13	405380	Thomas	M	B	Guilford	1				2		1		6	10
12/12/1996	13	320825	Peterson	M	B	Richmond	1				2					3
4/8/1997	12	571536	Fleming	M	B	Northampton	1									1
7/15/1997	12	255136	Mann	M	B	Wake	1				1				2	4
9/10/1997	12	33802	Blakeney	M	B	Union	1				1	1			2	5
11/14/1997	12	134151	Fowler	M	B	Mecklenburg	1			1	2				4	8
10/23/1998	11	472274	Taylor	M	B	New Hanover	1				1				3	5
4/1/1999	10	311386	Parker	F	B	Wake	1						1		3	5
5/27/1999	10	654009	Wiley	M	B	New Hanover	1				3	1				5
7/13/1999	10	139378	Gainey	M	B	Harnett	1				1	1	1		7	11
11/12/1999	10	491889	Barden	M	B	Sampson	1								1	2
12/9/1999	10	130628	Fletcher	M	B	Rutherford	1			1	1	4			4	11
2/9/2000	9	561692	Hooks	M	B	Forsyth	1								1	2
4/10/2000	9	349019	Robinson	M	B	Wilson	1				1			1	4	7
8/11/2000	9	51026	Brown	M	B	Wayne	1								2	3
8/24/2001	8	592464	Bell	M	B	Onslow	1						1		5	7
3/14/2002	7	379083	Smith	M	B	Washington	1			1		1			15	18
3/28/2002	7	64125	Campbell	M	B	Pender	1				1		1		3	6
10/23/2002	7	612123	Augustine	M	B	Brunswick	1					1			3	5
11/14/2002	7	406487	Thompson	M	B	Guilford	1				2		1		1	5

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7/15/2003	6	507467	McNeill	M	B	Scotland	1								2	3
12/18/2003	6	120236	Elliott	M	B	Moore	1					3			11	15
9/8/2004	5	523493	Cummings	M	B	New Hanover	1				2				6	9
8/24/2005	4	762634	Taylor	M	B	Harnett	1				4				6	11
2/17/2006	3	940436	Murrell	M	B	Forsyth	1				1		1			3
7/2/2007	2	1025501	Waring	M	B	Wake	1									1
11/21/2008	1	846840	Little	M	B	Forsyth	1								5	6
4/9/2009	0	796623	Bacote	M	B	Johnston										0
7/6/2000	9	626944	Walters	F	I	Cumberland	5			1	3		3			12
12/16/1994	15	95279	Cummings	M	I	Brunswick	2			1	1	1			6	11
11/11/1997	12	95361	Cummings	M	I	Robeson	2								6	8
9/3/1998	11	584095	Brewington	M	I	Harnett	2								3	5
10/27/1995	14	393145	Strickland	M	I	Union	1	1							4	6
5/14/1996	13	246186	Locklear	M	I	Robeson	1			1		2			1	5
7/23/1998	11	542024	Hyde	M	I	Onslow	1					2			1	4
2/7/2005	4	801680	Polke	M	I	Randolph	1									1
6/14/2005	4	245105	Locklear	M	I	Robeson	1								30	31
6/20/1996	13	506556	Guevara	M	O	Johnston	1			1						2
4/19/2001	8	702066	Garcia	M	O	Wake	1									1
10/25/2001	8	742512	Miller	M	O	Onslow	1				2		1		1	5

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Collective Devastation of Death Row Inmates:							270	7	58	81	102	88	40	3	546	1195
4/4/2006	3	775602	Garcell	M	O	Rutherford	1				2		4		1	8
3/27/1998	11	137368	Frogg	M	W	Forsyth	6				1				1	8
2/4/1999	10	280127	Meyer	M	W	Cumberland	4				2	1			2	9
9/26/2003	6	113234	Duke	M	W	Gaston	4			1					4	9
9/15/1994	15	438643	Wilkinson	M	W	Cumberland	3		5			2			1	11
2/7/2000	9	199877	Hyatt	M	W	Buncombe	3		2		3		3		3	14
9/3/1993	16	141374	Garner	M	W	Robeson	3				2				1	6
3/15/1995	14	368820	Sidden	M	W	Alexander	3						2			5
12/20/1995	14	388922	Stephens	M	W	Johnston	3			3					2	8
10/2/1996	13	510234	Davis	M	W	Buncombe	3			2						5
10/1/1992	17	294214	Moseley	M	W	Forsyth	2		2							4
4/30/1991	18	85045	Connor	M	W	Gates	2		1		1	2			7	13
8/21/1985	24	234897	Laws	M	W	Davidson	2			1						3
12/19/1991	18	351933	Rose	M	W	Rockingham	2				2	1				5
9/23/1992	17	264009	McCarver	M	W	Cabarrus	2				2				6	10
5/27/1993	16	251740	Lynch	M	W	Gaston	2								19	21
10/6/1995	14	487180	Warren	M	W	Buncombe	2									2
4/9/1996	13	528622	McNeill	M	W	Wake	2				2					4
3/24/1997	12	311966	Parker	M	W	Sampson	2					5			4	11
7/3/1997	12	176701	Hedgepath	M	W	Halifax	2			1					2	5

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2/22/1999	10	330166	Prevatte	M	W	Stanly	2				1	1	2			6
11/9/2000	9	217326	Jones, Sr.	M	W	Onslow	2								1	3
3/10/2004	5	562597	Berry	M	W	New Hanover	2								12	14
9/9/2005	4	526698	Raines	M	W	Henderson	2				1				15	18
12/20/2006	3	900281	Wilkerson	M	W	Randolph	2									2
7/8/1993	16	63592	Campbell	M	W	Rowan	1		2		1	1	1		2	8
10/31/1995	14	511057	Hill	M	W	Harnett	1		2			1			1	5
11/19/1996	13	412440	Trull	M	W	Randolph	1		2			1	1			5
4/24/1998	11	158506	Grooms	M	W	Scotland	1		2	1	1		1		3	9
5/14/1992	17	339314	Reeves	M	W	Craven	1		1							2
10/4/1993	16	99090	Daughtry	M	W	Johnston	1		1	2					1	5
4/20/1994	15	221506	Kandies	M	W	Randolph	1		1							2
6/5/1996	13	471315	Billings	M	W	Caswell	1		1	1		1			2	6
7/11/2005	4	667195	Lane	M	W	Wayne	1		1					1	2	5
2/23/2009	0	366770	Sherrill	M	W	Mecklenburg	1	1	1	1	1					5
11/5/1990	19	207779	Jennings	F	W	Wilson	1									1
11/16/1990	19	288088	Moore	F	W	Forsyth	1									1
3/12/1992	17	100579	Davis	M	W	Buncombe	1			1	2		1			5
4/21/1993	16	58316	Burr	M	W	Alamance	1					2			1	4
10/8/1993	16	54499	Buckner	M	W	Gaston	1				2	1			3	7

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11/3/1993	16	441726	Williams	M	W	Randolph	1			1					29	31
12/8/1993	16	12311	Atkins	M	W	Buncombe	1									1
2/3/1994	15	17060	Ball	M	W	Beaufort	1				2	1			10	14
5/4/1994	15	120038	Elliott	M	W	Davidson	1							1		2
6/16/1995	14	61528	Cagle	M	W	Cumberland	1				2				2	5
4/18/1996	13	499258	Murillo	M	W	Richmond	1									1
7/3/1997	12	538027	Cheek	M	W	New Hanover	1				2		1		1	5
4/7/1998	11	587681	Holman	M	W	Wake	1									1
8/28/1998	11	388640	Steen	M	W	Mecklenburg	1					2			8	11
3/2/1999	10	515143	Thibodeaux	M	W	Forsyth	1			1					1	3
3/18/1999	10	580028	May	M	W	Buncombe	1									1
5/22/1999	10	542384	Call	M	W	Ashe	1			1	1		1			4
6/3/1999	10	654093	Anthony	M	W	Gaston	1			1						2
6/4/1999	10	206197	Jaynes	M	W	Polk	1					1			4	6
8/31/2000	9	434845	White	M	W	Forsyth	1			1		5			5	12
6/6/2001	8	561943	Haselden	M	W	Stokes	1			1	1				3	6
7/19/2001	8	428143	Watts	M	W	Davidson	1				1	4			20	26
5/29/2002	7	765397	Smith	M	W	Rowan	1									1
11/18/2003	6	5091	Allen	M	W	Montgomery	1					5			15	21
3/17/2004	5	509565	Hurst	M	W	Randolph	1					3			5	9

North Carolina Death Row Inmates (as of June 8, 2009)

CLICK this link to view the Dept. of Correction website/source

Year Committed	Number of Years	View Picture / Details	Last Name	SEX	RACE	County of Conviction	Murder	Man-slaughter	Rape	Assault	Robbery w/ Dangerous Weapon	Robbery / Felony B&E	Kid-napping	Child Rape/ Child Abuse	Misc	Total
Collective Devastation of Death Row Inmates:							**270**	**7**	**58**	**81**	**102**	**88**	**40**	**3**	**546**	**1195**
5/6/2004	5	14016	Badgett	M	W	Randolph	1	1		3					2	7
2/8/2005	4	150949	Goss	M	W	Ashe	1			2					7	10
4/4/2006	3	831753	Maness	M	W	Brunswick	1			6	1				3	11
Collective Devastation of Death Row Inmates:							**270**	**7**	**58**	**81**	**102**	**88**	**40**	**3**	**546**	**1195**

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, June 17, 2009

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, June 17, 2009, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Thom Tillis; Representatives Kelly Alexander, Angela Bryant, Mitch Gillespie, Jim Gulley, Phil Haire, Dewey Hill, Mark Hilton, Sarah Stevens, Joe Tolson, and Winkie Wilkins. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Seitz. House Sergeant-at-Arms assisting: Young Bae, Judy Turner and Trey Raley. House Pages: Anna Hamilton from Wake County sponsored by Representative Weiss, Meredith Dinkins from Davie County sponsored by Representative Howard, Tisha Funderburk from Davie County sponsored by Representative Howard and Baker Jethro from Pitt County sponsored by Representative McLawhorn. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. The following bills were placed before the Committee:

Senate Bill 357-A BILL TO BE ENTITLED: an act requiring municipalities and membership corporations organized under Chapter 117 of the General Statutes to permit communications service providers to use their poles, ducts, and conduits for attachments and related uses, and authorizing the North Carolina Business Court to consider and resolve disputes concerning the rates, terms, and conditions associated with the use. Rep. Stevens moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Dickson to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Hill was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 3*)

Senate Bill 900-A BILL TO BE ENTITLED: an act to allow registers of deeds to remove personal identifying information from images or copies of records placed on the Internet. Rep. Hilton moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Rouzer to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Stevens was recognized for a motion to give a favorable

report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 4*)

Senate Bill 1078-A BILL TO BE ENTITLED: an act to provide that a probationer who is arrested and charged with the commission of a felony shall be temporarily detained without bond until the court has sufficient information to determine whether the probationer's release poses a danger to the public. The Chair called upon the bill sponsor Sen. Snow to explain the bill. At Sen Snow's request this bill was removed from the calendar.

Senate Bill 1089-A BILL TO BE ENTITLED: an act to authorize probation officers to transfer low-risk misdemeanants with no special conditions to unsupervised probation. The Chair called upon the bill sponsor Sen. Snow to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 5*)

Senate Bill 1091-A BILL TO BE ENTITLED: an act to amend the law regarding trafficking in methamphetamine and amphetamine to clarify that the charge of trafficking is based on the weight of the entire powder or liquid mixture rather than the weight of the actual amount of the controlled substance in the powder or liquid mixture. The Chair called upon the bill sponsor Sen. Snow to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Hilton was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 6*)

Senate Bill 11-A BILL TO BE ENTITLED: an act to provide that a district attorney or assistant district attorney who has a concealed handgun permit may carry or possess a concealed handgun while in a courthouse to discharge official duties. The Chair called upon the bill sponsor Sen. Boseman to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Hilton was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 7*)

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:47 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant



NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, June 17, 2009
1:00 PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	SB 357	Utilities/Regulation of Pole Attachments.	Senator Rand
2.	SB 11	DA & Ass't DA/Concealed Gun in Court House.	Senator Boseman
3.	SB 1078	Delay Bond/Probationer Arrested For Felony.	Senator Snow
4.	SB 1089	Low-Risk Probationers May Be Unsupervised.	Senator Snow
5.	SB 1091	Clarify Wt. Measurement/Meth Trafficking.	Senator Snow
6.	SB 900	Enable Registers of Deeds to Protect Identity.	Senator Rouzer

4. **Adjourn**

VISITOR REGISTRATION SHEET

Way & Means — 6/17/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Watters	NCDOJ
Debra R Camillis	UNC-IOG
Dana Shell	AOC
CASANDRA WHITTEL	AOC
Peg Dorer	Conference of DAs
Kimberly N Overton	Conference of DAs
Bob Wells	N.C. Tesco Alliance
Ann Hamlin	NCSBI
[illegible]	JDALPA
Joyce Peters	Joyce Peters & Assoc
Wendy Kelly	SZDW
Dave Hamburger	Electric Cities

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	[illegible]
Lynn Holmes	NCCTA

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stanny Roberson	TWC
Mara Trahe	Bandy River
Joni Lagoe	NMRS

SENATE BILL 357
Commerce Committee Substitute Adopted 5/7/09

Short Title: Utilities/Regulation of Pole Attachments. (Public)

Sponsors:

Referred to:

March 3, 2009

A BILL TO BE ENTITLED

AN ACT REQUIRING MUNICIPALITIES AND MEMBERSHIP CORPORATIONS ORGANIZED UNDER CHAPTER 117 OF THE GENERAL STATUTES TO PERMIT COMMUNICATIONS SERVICE PROVIDERS TO USE THEIR POLES, DUCTS, AND CONDUITS FOR ATTACHMENTS AND RELATED USES, AND AUTHORIZING THE NORTH CAROLINA BUSINESS COURT TO CONSIDER AND RESOLVE DISPUTES CONCERNING THE RATES, TERMS, AND CONDITIONS ASSOCIATED WITH THE USE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-55. Regulation of pole attachments.**

(a) A municipality, or a membership corporation organized under Chapter 117 of the General Statutes, that owns or controls poles, ducts, or conduits shall allow any communications service provider to utilize their poles, ducts, and conduits at just, reasonable, and nondiscriminatory rates, terms, and conditions adopted pursuant to negotiated or adjudicated agreements. A request to utilize poles, ducts, or conduits under this section may be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the municipality or membership corporation, which is to be reimbursed by the communications service provider. In granting a request under this section, a municipality or membership corporation shall require the requesting entity to comply with applicable safety requirements, including the National Electrical Safety Code and the applicable rules and regulations issued by the Occupational Safety and Health Administration.

(b) Following a request from a communications service provider, a municipality or membership corporation shall negotiate concerning the rates, terms, and conditions for the use of or attachment to the poles, ducts, or conduit that it owns or controls. Following a request from a party to an existing agreement made pursuant to the terms of the agreement or made within 120 days prior to or following the end of the term of the agreement, a communications service provider, and the municipality or membership corporation which is a party to that agreement shall negotiate concerning the rates, terms, and conditions for the continued use of or attachment to the poles, ducts, or conduits owned or controlled by one of the parties to the agreement. The negotiations shall include matters customary to such negotiations, including a fair and reasonable rate for use of facilities, indemnification by the attaching entity for losses caused in connection with the attachments, and the removal, replacement, or repair of installed

facilities for safety reasons. Upon reasonable request, a party shall state, in writing, its objections to any proposed rate, terms, and conditions of the other party.

(c) In the event the parties are unable to reach an agreement within 90 days, or if either party believes in good faith that an impasse has been reached prior to the expiration of the 90-day period, either party may bring an action in Business Court in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4, and the Business Court shall have exclusive jurisdiction over such actions. The parties shall identify with specificity in their respective pleadings the issues in dispute, and the Business Court shall (i) establish a procedural schedule which, unless otherwise agreed by the parties, is intended to resolve the action within a time period not to exceed 180 days of the commencement of the action, (ii) resolve any dispute identified in the pleadings consistent with the public interest and necessity so as to derive just and reasonable rates, terms, and conditions, taking into consideration and applying such other factors or evidence that may be presented by a party, including without limitation the rules and regulations applicable to attachments by each type of communications service provider under section 224 of the Communications Act of 1934, as amended, and (iii) apply any new rate adopted as result of the action retroactively to the date immediately following the expiration of the 90-day negotiating period or initiation of the lawsuit, whichever is earlier. Prior to commencing any action under this subsection, a party must pay any undisputed fees related to the use of poles, ducts, or conduits which are due and owing under a preexisting agreement with the municipality or membership corporation, and, in any action brought under this subsection, the court may resolve any existing disputes regarding fees alleged to be owing under a preexisting agreement. The provisions of this section do not apply to an entity whose poles, ducts, and conduits are subject to regulation under section 224 of the Communications Act of 1934, as amended.

(d) In the absence of agreement otherwise, in the event that the lines, equipment, or attachments of a communications service provider that are attached to the poles, ducts, or conduits of a municipality or membership corporation do not comply with applicable safety rules and regulations, the municipality or membership corporation may provide written notice of the noncompliant lines, equipment, or attachments, and make demand that the communications service provider bring such lines, equipment, and attachments into compliance with the specified safety rules and regulations within 90 days of the date of the notice and demand. Unless the communications service provider, within those 90 days, demonstrates that its lines, equipment, and attachments are in compliance with all applicable safety rules and regulations, or brings its lines, equipment, and attachments into compliance with the specified applicable safety rules and regulations, the municipality or membership corporation shall be entitled to take such remedial actions as are reasonably necessary to bring the lines, equipment, and attachments of the communications service provider into compliance, including removal of the lines, equipment, or attachments should removal be required to achieve compliance with the applicable safety rules and regulations. A municipality or membership corporation that removes or brings into compliance the noncompliant lines, equipment, or attachments of a communications service provider shall be entitled to recover its reasonable and actual costs for such activities from the communications service provider, and unless otherwise agreed by all of the parties, the communications service provider shall reimburse the municipality or membership corporation within 45 days of being billed for such costs. Nothing herein shall prevent a municipality or membership corporation from taking such action as may be necessary to remedy any exigent issue which is an imminent threat of death or injury to persons or property.

(e) For purposes of this section, the term "communications service provider" means a person or entity that provides or intends to provide the following: (i) telephone service as a public utility under Chapter 62 of the General Statutes or as a telephone membership corporation organized under Chapter 117 of the General Statutes; (ii) broadband service, but

excluding broadband service over energized electrical conductors owned by a municipality or cooperatively organized entity; or (iii) cable service over a cable system as those terms are defined in Article 42 of Chapter 66 of the General Statutes.

(f) The Business Court may adopt such rules as it deems necessary to implement its jurisdiction and authority under this section.

(g) Nothing herein shall preclude a party from bringing civil action in the appropriate division of the General Court of Justice seeking enforcement of an agreement concerning the rate, terms, and conditions for the use of or attachment to the poles, ducts, or conduit of a municipality or membership corporation."

SECTION 2. This act does not constitute certification of State regulation of pole attachments for purposes of section 224 of the Communications Act of 1934, as amended. If a court of competent jurisdiction determines that this act is tantamount to certification, this act shall become null and void.

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

SENATE BILL 357:
Utilities/Regulation of Pole Attachments

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Public Utilities	**Date:**	June 16, 2009
Introduced by:	Sen. Rand	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to Second Edition S357-CSRV-50		

SUMMARY: ***This proposed committee substitute for Senate Bill 357 would require municipalities and certain membership corporations to permit communications service providers to use their poles, ducts, and conduits for attachments and related uses, and would authorize the North Carolina Business Court to consider and resolve disputes concerning the rates, terms, and conditions associated with the use.***

[As introduced, this bill was identical to H820, as introduced by Reps. Dickson, McComas, Carney, Tillis, which is currently in House Public Utilities, if favorable, Ways and Means/Broadband Connectivity.]

BILL ANALYSIS: Senate Bill 357 would amend the Public Utilities Act to require municipalities and certain membership corporations to permit communications service providers to use their poles, ducts, and conduits at just and reasonable rates and conditions pursuant to negotiated or adjudicated agreements. "Communications service provider" is a defined term that would include persons or entities that provide telephone service, broadband service, or cable service. A request to a municipality or membership corporation to use its poles, ducts, or conduits could be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and the limitations could not be remedied at a reasonable cost to be reimbursed by the communications service provider. In the case of existing agreements, the bill provides for negotiation concerning the continued use of or attachment to poles, ducts, or conduits.

If the parties are not able to reach an agreement within 90 days, either party may bring an action in Business Court. The Business Court would be required to establish a procedural schedule intended to resolve the action within a 6-month period, and to resolve any dispute so as to derive just and reasonable rates, terms and conditions, consistent with the public interest and necessity. The Business Court would be authorized to adopt such rules as it deems necessary to implement its jurisdiction and authority.

The bill would require that any lines, equipment, or attachments of a communications service provider comply with applicable safety rules and regulations. The bill would provide a procedure for the municipality or membership corporation to demand compliance and to take necessary remedial action to remove or bring into compliance any noncompliant lines, equipment and attachments of a communications service provider.

The bill would not apply to entities subject to federal law concerning the regulation of pole attachments, including an entity who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 357
Commerce Committee Substitute Adopted 5/7/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S357-CSRV-50 [v.2]

6/15/2009 6:35:39 PM

Short Title: Utilities/Regulation of Pole Attachments. (Public)

Sponsors:

Referred to:

March 3, 2009

A BILL TO BE ENTITLED

AN ACT REQUIRING MUNICIPALITIES AND MEMBERSHIP CORPORATIONS ORGANIZED UNDER CHAPTER 117 OF THE GENERAL STATUTES TO PERMIT COMMUNICATIONS SERVICE PROVIDERS TO USE THEIR POLES, DUCTS, AND CONDUITS FOR ATTACHMENTS AND RELATED USES, AND AUTHORIZING THE NORTH CAROLINA BUSINESS COURT TO CONSIDER AND RESOLVE DISPUTES CONCERNING THE RATES, TERMS, AND CONDITIONS ASSOCIATED WITH THE USE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 62 of the General Statutes is amended by adding a new section to read:

"**§ 62-55. Regulation of pole attachments.**

(a) A municipality, or a membership corporation organized under Chapter 117 of the General Statutes, that owns or controls poles, ducts, or conduits shall allow any communications service provider to utilize its poles, ducts, and conduits at just, reasonable, and nondiscriminatory rates, terms, and conditions adopted pursuant to negotiated or adjudicated agreements. A request to utilize poles, ducts, or conduits under this section may be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the municipality or membership corporation to be reimbursed by the communications service provider. In granting a request under this section, a municipality or membership corporation shall require the requesting entity to comply with applicable safety requirements, including the National Electrical Safety Code and the applicable rules and regulations issued by the Occupational Safety and Health Administration.

(b) Following receipt of a request from a communications service provider, a municipality or membership corporation shall negotiate concerning the rates, terms, and conditions for the use of or attachment to the poles, ducts, or conduits that it owns or controls. Following a request from a party to an existing agreement made pursuant to the terms of the agreement or made within 120 days prior to or following the end of the term of the agreement, the communications service provider and the municipality or membership corporation which is a party to that agreement shall negotiate concerning the rates, terms, and conditions for the continued use of or attachment to the poles, ducts, or conduits owned or controlled by one of

the parties to the agreement. The negotiations shall include matters customary to such negotiations, including a fair and reasonable rate for use of facilities, indemnification by the attaching entity for losses caused in connection with the attachments, and the removal, replacement, or repair of installed facilities for safety reasons. Upon request, a party shall state in writing its objections to any proposed rate, terms, and conditions of the other party.

(c) In the event the parties are unable to reach an agreement within 90 days of a request to negotiate pursuant to subsection (b) of this section, or if either party believes in good faith that an impasse has been reached prior to the expiration of the 90-day period, either party may bring an action in Business Court in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4, and the Business Court shall have exclusive jurisdiction over such actions. The parties shall identify with specificity in their respective pleadings the issues in dispute, and the Business Court shall (i) establish a procedural schedule which, unless otherwise agreed by the parties, is intended to resolve the action within a time period not to exceed 180 days of the commencement of the action, (ii) resolve any dispute identified in the pleadings consistent with the public interest and necessity so as to derive just and reasonable rates, terms, and conditions, taking into consideration and applying such other factors or evidence that may be presented by a party, including without limitation the rules and regulations applicable to attachments by each type of communications service provider under section 224 of the Communications Act of 1934, as amended, and (iii) apply any new rate adopted as result of the action retroactively to the date immediately following the expiration of the 90-day negotiating period or initiation of the lawsuit, whichever is earlier. Prior to commencing any action under this subsection, a party must pay any undisputed fees related to the use of poles, ducts, or conduits which are due and owing under a preexisting agreement with the municipality or membership corporation. In any action brought under this subsection, the court may resolve any existing disputes regarding fees alleged to be owing under a preexisting agreement or regarding safety compliance arising under subsection (d) of this section. The provisions of this section do not apply to an entity whose poles, ducts, and conduits are subject to regulation under section 224 of the Communications Act of 1934, as amended.

(d) In the absence of an agreement between an attaching party and the involved municipality or membership corporation that provides otherwise, the following shall apply:

(1) When the lines, equipment, or attachments of a communications service provider that are attached to the poles, ducts, or conduits of a municipality or membership corporation do not comply with applicable safety rules and regulations set forth in subsection (a) of this section, the municipality or membership corporation may provide written notice of the noncompliant lines, equipment, or attachments, and make demand that the communications service provider bring such lines, equipment, and attachments into compliance with the specified safety rules and regulations. Within the 60-day period following the date of the notice and demand, the communications service provider shall either contest the notice of noncompliance in writing or bring its lines, equipment, and attachments into compliance with the specified applicable safety rules and regulations. If the work required to bring the facilities into compliance is not reasonably capable of being completed within the 60-day period, the period for compliance shall be extended as may be deemed reasonable under the circumstances so long as the communications service provider promptly commences and diligently pursues within the 60-day period such actions as are reasonably necessary to cause the facilities to be brought into compliance.

(2) When the communications service provider, or if applicable another responsible attaching party, fails to bring any noncompliant lines,

equipment, or attachments into compliance (i) within the 60-day period following the date of notice and demand pursuant to subdivision (1) of this subsection, or (ii) within 120 days following the date of notice and demand when the period is extended pursuant to subdivision (1) of this subsection, the municipality or membership corporation shall be entitled to take such remedial actions as are reasonably necessary to bring the lines, equipment, and attachments of the communications service provider into compliance, including removal of the lines, equipment, or attachments should removal be required to achieve compliance with the applicable safety rules and regulations.

(3) A municipality or membership corporation that removes or brings into compliance the noncompliant lines, equipment, or attachments of a communications service provider pursuant to subdivision (2) of this subsection shall be entitled to recover its reasonable and actual costs for such activities from the communications service provider or other attaching party whose action or inaction caused the noncompliance, and the responsible attaching party shall reimburse the municipality or membership corporation within 45 days of being billed for such costs.

(4) All attaching parties shall work cooperatively to determine the causation of, and to effectuate any remedy for, non-compliant lines, equipment, and attachments. In the event of disputes under this subsection, the involved municipality or membership corporation or any attaching party may bring an action in the Business Court in accordance with the procedures for a mandatory business case set forth in G.S. 7A-45.4, and the Business Court shall have exclusive jurisdiction over such actions. The Business Court shall resolve such disputes consistent with the public interest and necessity. Nothing herein shall prevent a municipality or membership corporation from taking such action as may be necessary to remedy any exigent issue which is an imminent threat of death or injury to persons or damage to property.

(e) For purposes of this section, the term "communications service provider" means a person or entity that provides or intends to provide: (i) telephone service as a public utility under Chapter 62 of the General Statutes or as a telephone membership corporation organized under Chapter 117 of the General Statutes; (ii) broadband service, but excluding broadband service over energized electrical conductors owned by a municipality or membership corporation; or (iii) cable service over a cable system as those terms are defined in Article 42 of Chapter 66 of the General Statutes.

(f) The Business Court may adopt such rules as it deems necessary to implement its jurisdiction and authority under this section.

(g) Nothing herein shall preclude a party from bringing civil action in the appropriate division of the General Court of Justice seeking enforcement of an agreement concerning the rate, terms, and conditions for the use of or attachment to the poles, ducts, or conduit of a municipality or membership corporation."

SECTION 2. This act does not constitute certification of State regulation of pole attachments for purposes of section 224 of the Communications Act of 1934, as amended. If a court of competent jurisdiction determines that this act is tantamount to certification, this act shall become null and void.

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 357 A BILL TO BE ENTITLED AN ACT REQUIRING MUNICIPALITIES AND MEMBERSHIP CORPORATIONS ORGANIZED UNDER CHAPTER 117 OF THE GENERAL STATUTES TO PERMIT COMMUNICATIONS SERVICE PROVIDERS TO USE THEIR POLES, DUCTS, AND CONDUITS FOR ATTACHMENTS AND RELATED USES, AND AUTHORIZING THE NORTH CAROLINA BUSINESS COURT TO CONSIDER AND RESOLVE DISPUTES CONCERNING THE RATES, TERMS, AND CONDITIONS ASSOCIATED WITH THE USE.

☒ With a favorable report as to the House committee substitute bill, unfavorable as to Senate Committee Substitute Bill and recommendation that the House committee substitute bill be re-referred to the Committee on PUBLIC UTILITIES.

(FOR JOURNAL USE ONLY)

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

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

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

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

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

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

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 900
Judiciary I Committee Substitute Adopted 5/13/09

Short Title: Enable Registers of Deeds to Protect Identity. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW REGISTERS OF DEEDS TO REMOVE PERSONAL IDENTIFYING INFORMATION FROM IMAGES OR COPIES OF RECORDS PLACED ON THE INTERNET.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.10 is amended by adding a new subsection to read:

"(f1) Without a request made pursuant to subsection (f) of this section, a register of deeds or clerk of court may remove from an image or copy of an official record placed on a register of deeds' or clerk of court's Internet Web site available to the general public, or placed on an Internet Web site available to the general public used by a register of deeds or clerk of court to display public records, a person's social security, employer taxpayer identification, drivers license, State identification, passport, checking account, savings account, credit card, debit card number, date of birth, or personal identification (PIN) code or passwords contained in that official record."

SECTION 2.(a) G.S. 132-1.10 is amended by adding a new subsection to read:

"(f2) Registers of deeds and clerks of court shall apply optical character recognition technology and other reasonably available technology to official records placed on Internet Web sites available to the general public in order to, in good faith, identify and redact social security and drivers license numbers."

SECTION 2.(b) G.S. 132-1.10(h) reads as rewritten:

"(h) Any affected person may petition the court for an order directing compliance with this section. No liability shall accrue to a register of deeds or clerk of court or to his or her agent for any action related to provisions of this section or for any claims or damages that might result from a social security number or other identifying information on the public record or on a register of deeds' or clerk of court's Internet Web site available to the general public or an Internet Web site available to the general public used by a register of deeds or clerk of ~~court.~~ court, provided a register of deeds or clerk of court complies with subsection (f2) of this section."

SECTION 3. Section 2 of this act becomes effective July 1, 2011. The remainder of this act is effective when it becomes law.

SENATE BILL 900:
Enable Registers of Deeds to Protect Identity

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	June 16, 2009
Introduced by:	Sen. Rouzer	**Prepared by:**	Tim Hovis Committee Counsel
Analysis of:	PCS to Second Edition S900-CSST-55		

SUMMARY: Senate Bill 900 would do the following:

- ***Permit Registers of Deeds and Clerks of Court to remove personal identification information from their public Web sites without requests, which may be completed through the use of optical character recognition technology or other reasonably available technology.***
- ***Require the Conference of Clerks of Superior Court to report annually on the removal of social security and drivers license numbers from public Web sites by clerks of superior court and registers of deeds.***

CURRENT LAW: G.S. 132-1.10 allows a person to request the Register of Deeds or Clerk of Court to remove any personal identifying information on a public record viewable from the public Web site of the Register of Deeds or Clerk of Court.

BILL ANALYSIS:

Section 1. Permits Registers of Deeds and Clerks of Court to remove social security and drivers license numbers from their public Web sites without a request from a specific individual, which may be done through the use of optical character recognition technology or other reasonably available technology.

Section 2. Requires an annual report to the Joint Legislative Commission on Governmental Operations on or before March 1st of each year regarding the individual counties use of the authority to remove social security and drivers license numbers from official records published on the Web sites of the clerks of superior court and registers of deeds.

EFFECTIVE DATE: July 1, 2009.

S900-SMST-52(CSST-55) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 900
Judiciary I Committee Substitute Adopted 5/13/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S900-CSST-55 [v.3]

6/17/2009 9:25:37 AM

Short Title: Enable Registers of Deeds to Protect Identity. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW REGISTERS OF DEEDS TO REMOVE PERSONAL IDENTIFYING INFORMATION FROM IMAGES OR COPIES OF RECORDS PLACED ON THE INTERNET WITHOUT A REQUEST .

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 132-1.10 is amended by adding a new subsection to read:

"(f1) Without a request made pursuant to subsection (f) of this section, a register of deeds or clerk of court may remove from an image or copy of an official record placed on a register of deeds' or clerk of court's Internet Web site available to the general public, or placed on an Internet Web site available to the general public used by a register of deeds or clerk of court to display public records, a person's social security or drivers license number contained in that official record. Registers of deeds and clerks of court may apply optical character recognition technology or other reasonably available technology to official records placed on Internet Web sites available to the general public in order to, in good faith, identify and redact social security and drivers license numbers."

SECTION 2. The Conference of Clerks of Superior Court shall, in consultation with the registers of deeds, annually study the status of the individual counties and judicial districts as to whether or not the clerks of superior court or the register of deeds are implementing this act and report results of the study to the Joint Legislative Commission on Governmental Operations on or before March 1st of each year.

SECTION 3. This act becomes effective July 1, 2009.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 900 A BILL TO BE ENTITLED AN ACT TO ALLOW REGISTERS OF DEEDS TO REMOVE PERSONAL IDENTIFYING INFORMATION FROM IMAGES OR COPIES OF RECORDS PLACED ON THE INTERNET.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill and recommendation that the House committee substitute bill be re-referred to the Committee on JUDICIARY I:

(FOR JOURNAL USE ONLY)

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

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

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

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 1089
Second Edition Engrossed 5/13/09

Short Title:	Low-Risk Probationers May Be Unsupervised.	(Public)
Sponsors:	Senators Snow; Kinnaird and Atwater.	
Referred to:	Judiciary II.	

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PROBATION OFFICERS TO TRANSFER LOW-RISK MISDEMEANANTS WITH NO SPECIAL CONDITIONS TO UNSUPERVISED PROBATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1343(g) reads as rewritten:

"(g) Probation Officer May Determine Payment ~~Schedules.~~Schedules and May Transfer Low-Risk Misdemeanants to Unsupervised Probation. – If a person placed on supervised probation is required as a condition of that probation to pay any moneys to the clerk of superior court, the court may delegate to a probation officer the responsibility to determine the payment schedule. The court may also authorize the probation officer to transfer the person to unsupervised probation after all the moneys are paid to the clerk. If the probation officer transfers a person to unsupervised probation, he must notify the clerk of that action. In addition, a probation officer may transfer a misdemeanant from supervised to unsupervised probation if the misdemeanant is not subject to any special conditions and was placed on probation solely for the collection of court-ordered payments, and the risk assessment shows the misdemeanant to be a low-risk offender; however, such a transfer to unsupervised probation does not relieve the misdemeanant of the obligation to continue making court-ordered payments under the terms of the misdemeanant's probation."

SECTION 2. This act becomes effective July 1, 2009.

SENATE BILL 1089:
Low-Risk Probationers May Be Unsupervised

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	June 16, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Tim Hovis*
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 1089 would authorize probation officers to transfer a misdemeanant to unsupervised probation if the misdemeanant is not subject to special conditions, was placed on probation for the collection of court-ordered payments, and the risk assessment shows that the misdemeanant is a low-risk offender.***

CURRENT LAW:

Under current law, a court may authorize a parole officer to:

- Determine the payment schedule of a probationer who is required to make payments to the clerk of superior court as a condition of probation.
- Transfer the probationer to unsupervised probation after all payments are made to the clerk of court.

BILL ANALYSIS:

Senate Bill 1089 would authorize probation officers to transfer a misdemeanant to unsupervised probation if the misdemeanant is not subject to special conditions, was placed on probation for the collection of court-ordered payments, and the risk assessment shows that the misdemeanant is a low-risk offender.

Transfer of a misdemeanant to unsupervised probation does not relieve the offender of the obligation to make court-ordered payments as a condition of probation.

EFFECTIVE DATE: This act becomes effective July 1, 2009.

*This summary was substantially contributed to by Jeff Hudson, Staff Atttorney.

S1089-SMRG-73(e2) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 1089 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE PROBATION OFFICERS TO TRANSFER LOW-RISK MISDEMEANANTS WITH NO SPECIAL CONDITIONS TO UNSUPERVISED PROBATION.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 1091

Short Title:	Clarify Wt. Measurement/Meth Trafficking.	(Public)
Sponsors:	Senator Snow.	
Referred to:	Judiciary II.	

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING TRAFFICKING IN METHAMPHETAMINE AND AMPHETAMINE TO CLARIFY THAT THE CHARGE OF TRAFFICKING IS BASED ON THE WEIGHT OF THE ENTIRE POWDER OR LIQUID MIXTURE RATHER THAN THE WEIGHT OF THE ACTUAL AMOUNT OF THE CONTROLLED SUBSTANCE IN THE POWDER OR LIQUID MIXTURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95(h)(3b) reads as rewritten:

"(3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of ~~methamphetamine or amphetamine~~ methamphetamine, amphetamine, or any mixture containing such substance shall be guilty of a felony which felony shall be known as "trafficking in methamphetamine or amphetamine" and if the quantity of such substance or mixture involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars ($50,000);

b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars ($100,000);

c. Is 400 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined at least two hundred fifty thousand dollars ($250,000)."

SECTION 2. This act becomes effective September 1, 2009, and applies to offenses committed on or after that date.

SENATE BILL 1091:
Clarify Wt. Measurement/Meth Trafficking

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	June 17, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Susan Sitze*
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate bill 1091 amends the law pertaining to trafficking in amphetamines and methamphetamines by adding the clause "or any mixture containing such substance" to clarify that the charge of trafficking is based on the weight of the entire powder or liquid mixture seized rather than the weight of the actual amount of the controlled substance contained within the powder or liquid mixture.***

CURRENT LAW: G.S. 90-95(h)(3b) provides that any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or amphetamine is guilty of trafficking in methamphetamine or amphetamine. If the quantity of such substance or mixture involved is:

- 28 grams or more, but less than 200 grams, the person is guilty of a Class F felony
- 200 grams or more, but less than 400 grams, the person is guilty of a Class E felony
- 400 grams or more, the person is guilty of a Class C felony

BACKGROUND: In 2008, a decision by the North Carolina Court of Appeals[1] revealed that the language in the statute pertaining to trafficking in amphetamines and methamphetamines differed from other trafficking statutes governing drugs which are commonly manufactured and sold in powder form – specifically the statute governing amphetamine and methamphetamine did not contain the clause "**or any mixture containing such substance.**" This clause is contained in the trafficking statutes pertaining to methaqualone, cocaine, heroin, and LSD, and allows a charge to be brought on the total weight of the powder seized rather than the actual amount of controlled substance contained within the powder mixture.

BILL ANALYSIS: The bill would amend the law pertaining to trafficking in amphetamines and methamphetamines by adding the clause "or any mixture containing such substance" to clarify that the charge of trafficking is based on the weight of the entire powder or liquid mixture seized rather than the weight of the actual amount of the controlled substance contained within the powder or liquid mixture.

EFFECTIVE DATE: The bill would become effective September 1, 2009, and apply to offenses committed on or after that date.

S1091-SMSA-102(e1) v1

**Jennifer McGinnis, Staff Attorney, contributed substantially to this summary.*

[1] *State v. Conway*, 669 S.E.2d 40 (2008).

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

SB 1091 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING TRAFFICKING IN METHAMPHETAMINE AND AMPHETAMINE TO CLARIFY THAT THE CHARGE OF TRAFFICKING IS BASED ON THE WEIGHT OF THE ENTIRE POWDER OR LIQUID MIXTURE RATHER THAN THE WEIGHT OF THE ACTUAL AMOUNT OF THE CONTROLLED SUBSTANCE IN THE POWDER OR LIQUID MIXTURE.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 11
Judiciary I Committee Substitute Adopted 5/12/09

Short Title: DA & Ass't DA/Concealed Gun in Courthouse. (Public)

Sponsors:

Referred to:

January 29, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A DISTRICT ATTORNEY OR ASSISTANT DISTRICT ATTORNEY WHO HAS A CONCEALED HANDGUN PERMIT MAY CARRY OR POSSESS A CONCEALED HANDGUN WHILE IN A COURTHOUSE TO DISCHARGE OFFICIAL DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on State property and in courthouses.**

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply to:

(1) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(1a) A person exempted by the provisions of G.S. 14-269(b),

(2) through (4) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of registration,

(4b) Any district court judge or superior court judge who carries or possesses a concealed handgun in a building housing a court of the General Court of Justice if the judge is in the building to discharge his or her official duties and the judge has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24,

(4c) Firearms in a courthouse, carried by detention officers employed by and authorized by the sheriff to carry firearms,

(4d) Any district attorney or assistant district attorney who carries or possesses a concealed handgun in any portion of a building housing a court of the General Court of Justice other than a courtroom itself, if the district attorney or assistant district attorney (i) is in the building to discharge their official duties, (ii) has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24, (iii) has successfully completed weapons retention training substantially similar to that provided to certified law enforcement officers in North Carolina, and

(iv) secures the weapon in a locked compartment when the weapon is not on their person,

(5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

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

SENATE BILL 11:
DA & Ass't DA/Concealed Gun in Courthouse

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary II	**Date:**	June 17, 2009
Introduced by:	Sen. Boseman	**Prepared by:**	Susan Sitze*
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 11 authorizes district attorneys or assistant district attorneys to carry a concealed handgun in all parts of a courthouse other than the courtrooms if they are in the courthouse to discharge their official duties, have a valid concealed handgun permit, and have completed weapons retention training.***

CURRENT LAW: G.S. 14-269.4 makes it unlawful to carry a deadly weapon in any building housing any court of the General Court of Justice. A violation of G.S. 14-269.4 is a Class 1 misdemeanor, punishable by up to 120 days and a fine in the discretion of the court. Under G.S. 14-415.11(c), a concealed handgun permit does not authorize a person to carry a concealed handgun in any area prohibited by G.S. 14-269.4. In 2007, subsection (4b) was added to this section permitting a judge with a valid concealed carry permit to carry or possess a concealed handgun when present in a courthouse to discharge his or her official duties.

BILL ANALYSIS: Senate Bill 11 amends G.S. 14-269.4 to exempt district attorneys and assistant district attorneys from that section's prohibition against carrying a deadly weapon in a courthouse, permitting them to carry or possess a concealed handgun in all parts of a building housing a court of the General Court of Justice, other than the courtrooms themselves, if they are in the building to discharge their official duties, possess a valid concealed handgun permit, and have successfully completed weapons retention training substantially similar to that received by certified law enforcement officers. They are required to secure the weapon in a locked compartment when the weapon is not on their person.

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

Wendy Graf Ray and Bill Patterson, staff attorneys, substantially contributed to this summary.

S11-SMSA-100(e2) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 11 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A DISTRICT ATTORNEY OR ASSISTANT DISTRICT ATTORNEY WHO HAS A CONCEALED HANDGUN PERMIT MAY CARRY OR POSSESS A CONCEALED HANDGUN WHILE IN A COURTHOUSE TO DISCHARGE OFFICIAL DUTIES.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

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

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

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

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

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

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, June 24, 2009

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, June 24, 2009, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Lucy Allen, Angela Bryant, Mitch Gillespie, Jim Gulley, Phil Haire, Mark Hilton, Sarah Stevens, Joe Tolson, and Winkie Wilkins. Staff in attendance: Brenda Carter, Peter Capriglione and Susan Seitz. House Sergeant-at-Arms assisting: Rod Finger, Mike Martin and Martha Gadison. House Pages: Brad McVicker from Orange County sponsored by Representative Insko, Alex Steiner from Orange County sponsored by Representative Insko, Adam McCoy from Transylvania County sponsored by Representative Guice. and Ian MacDonald from Forsyth County sponsored by Representative Brown. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. The following bills were placed before the Committee:

Senate Bill 513-A BILL TO BE ENTITLED: an act to authorize service by mail of notices of hearings on violations of unsupervised probation. Rep. Coates moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Sen. Clodfelter to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. *(Attachment 3)*

859-A BILL TO BE ENTITLED: an act to allow cities with population greater than five hundred thousand to be subject to the State Tort Claims Act with Certain Modifications. The Chair called upon the bill sponsor Sen. Clodfelter to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. *(Attachment 4)*

Senate Bill 759-A BILL TO BE ENTITLED: an act to require law enforcement agencies to designate patterns in writing for stopping vehicles at checking stations.

The Chair called upon the bill sponsor Sen. McKissick to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 5*)

Senate Bill 1076-A BILL TO BE ENTITLED: an act to modify the criminal justice partnership program to allow community-level offenders to be served by the program. Rep. Haire moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Sen. Snow to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Haire was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 6*)

Senate Bill 1078-A BILL TO BE ENTITLED: an act to provide that a probationer who is arrested and charged with the commission of a felony shall be temporarily detained without bond until the court has sufficient information to determine whether the probationer's release poses a danger to the public. Rep. Tolson moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Sen. Snow to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 7*)

Senate Bill 1017-A BILL TO BE ENTITLED: an act to enhance protections against identity theft and to protect the credit of crime victims during the pendency of crime victims' compensation fund applications and appeals. Rep. Allen moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Sen. Stein to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. This bill was rescheduled for our next meeting do to time restrains.

With no further time for business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:50 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, June 24, 2009
1:00 PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	SB 513	Notice of Hearing/Unsupervised Probation.	Senator Clodfelter
2.	SB 859	Tort Claims Act/Local Gov. Opt-in.	Senator Clodfelter
3.	SB 759	Modify DWI Checking Station Requirements.	Senator McKissick
4.	SB 1076	Modify Crim. Justice Partnership Program.	Senator Snow
5.	SB 1078	Delay Bond/Probationer Arrested For Felony.	Senator Snow
6.	SB 929	No Set Aside of Bond Forfeit/Actual Notice.	Senator Berger
7.	SB 1017	Enhance Protections against Identity Theft.	Senator Stein

4. **Adjourn**

VISITOR REGISTRATION SHEET

Ways & Means — 6-24-09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Darrell Jernigan	Gov. Hwy Safety Program
Mildred Spearman	NCDOC
Jim Mock	NCDOC
Marvin Waters	CCPS
Lindsay Clifton	Gov's office
Amanda Garrett	NCARD - Person County
Paul Stock	NCBA
Betty Turner	BAC
Lad Rubens	CJPC
Julie Brill	NCDOJ
Greg McLeod	NCAGO

VISITOR REGISTRATION SHEET

Ways & Means — 6/24/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	[signature]
Eddie Caldwell	NC Sheriffs' Assn.
[signature]	NCFBS
Heather Barrett	Hunton & Williams

VISITOR REGISTRATION SHEET

Ways + Means — 6/24/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Poteat	NCASA
Alicia Davis	MWC
Kevin Leonard	NCACC
Johanna Reese	DOT
Dan Crawford	OSNC
Carley Ruff	NCHC
Al Ripley	NCJC
Leann Killian	Nelson Mullins

VISITOR REGISTRATION SHEET

Ways + Means — 6/24/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Black	NCBAA
Keith Sutton	DJJDP
Tom Hardy	NCBAA
[illegible]	CDIA
[illegible]	TransUnion
Andy Ellen	NCRLWA
[illegible]	NMRS
Penny Griffin	School of Gov.
Cam Cover	BOMHU
Sarah Preston	ACLU-NC
Leanne Winner	NCSBA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 4

SENATE BILL 513

Judiciary I Committee Substitute Adopted 4/1/09
Third Edition Engrossed 4/7/09
House Committee Substitute Favorable 6/16/09

Short Title: Notice of Hearing/Unsupervised Probation. (Public)

Sponsors:

Referred to:

March 11, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE SERVICE BY MAIL OF NOTICES OF HEARINGS ON VIOLATIONS OF UNSUPERVISED PROBATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1344 is amended by adding a new subsection to read:

"(b1) Service of Notice of Hearing on Violation of Unsupervised Probation. – Notice of a hearing in response to a violation of unsupervised probation shall be given either by personal delivery to the person to be notified or by depositing the notice in the United States mail in an envelope with postage prepaid, addressed to the person at the last known address available to the preparer of the notice and reasonably believed to provide actual notice to the offender."

SECTION 2. This act becomes effective July 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 4

SENATE BILL 513
Judiciary I Committee Substitute Adopted 4/1/09
Third Edition Engrossed 4/7/09
House Committee Substitute Favorable 6/16/09

Short Title: Notice of Hearing/Unsupervised Probation. (Public)

Sponsors:

Referred to:

March 11, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE SERVICE BY MAIL OF NOTICES OF HEARINGS ON VIOLATIONS OF UNSUPERVISED PROBATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1344 is amended by adding a new subsection to read:

"(b1) Service of Notice of Hearing on Violation of Unsupervised Probation. – Notice of a hearing in response to a violation of unsupervised probation shall be given either by personal delivery to the person to be notified or by depositing the notice in the United States mail in an envelope with postage prepaid, addressed to the person at the last known address available to the preparer of the notice and reasonably believed to provide actual notice to the offender."

SECTION 2. This act becomes effective July 1, 2009.

SENATE BILL 513:
Notice of Hearing/Unsupervised Probation

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	June 24, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Susan Sitze
Analysis of:	Fourth Edition		Committee Counsel

SUMMARY: ***Senate Bill 513 authorizes service by mail of notices of hearings on violations of unsupervised probation.***

BILL ANALYSIS: Senate Bill 513 would authorize notice of a hearing in response to a violation of unsupervised probation to be given either by personal delivery or by depositing the notice in the US Mail in an envelope with postage prepaid, addressed to the person at the last known address available to the preparer of the notice and reasonably believed to provide actual notice to the offender.

EFFECTIVE DATE: This act becomes effective July 1, 2009.

S513-SMSA-109(e4) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 513 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE SERVICE BY MAIL OF NOTICES OF HEARINGS ON VIOLATIONS OF UNSUPERVISED PROBATION.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

_____ The bill/resolution is re-referred to the Committee on _____.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 859

Short Title:	Tort Claims Act/Local Gov. Opt-in.	(Public)
Sponsors:	Senators Clodfelter; and Hartsell.	
Referred to:	Judiciary I.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW CITIES WITH POPULATION GREATER THAN FIVE HUNDRED THOUSAND TO BE SUBJECT TO THE STATE TORT CLAIMS ACT WITH CERTAIN MODIFICATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-485.5. Waiver of immunity for large cities through State Tort Claims Act.**

(a) Any city with a population of 500,000 or more is authorized to waive its immunity from civil liability in tort by passage of a resolution expressing the intent of the city to waive its sovereign immunity pursuant to Article 31 of Chapter 143 of the General Statutes, as modified by subsection (b) of this section, and subject to the limitations set forth by subsection (c) of this section.

(b) The following modifications of Article 31 of Chapter 143 of the General Statutes shall apply to the waiver of sovereign immunity described by subsection (a) of this section:

(1) Jurisdiction for tort claims against the city shall be vested in the Superior Court Division of the General Court of Justice of the county where the city is principally located, and, except as otherwise provided in this section, tort claims against a city shall be governed by the North Carolina Rules of Civil Procedure. The city shall be solely responsible for the expenses of its legal representation in connection with claims asserted against it, and for payment of the amount for which it is found liable under this section. Therefore, G.S. 143-291, 143-291.1, 143-291.2; 143-291.3, 143-292, 143-293, 143-295, 143-295.1, 143-296, 143-297, 143-298, 143-299.4, and 143-300 shall not apply to claims under this section.

(2) Appeals to the Court of Appeals from a decision of the Superior Court Division shall be treated in the same manner as an appeal from a decision of the Industrial Commission under G.S. 143-294.

(3) The limitation on claims set forth in G.S. 143-299, the burden of proof and defense set forth in G.S. 143-299.1, and the limitation on payments set forth in G.S. 143-299.2 shall apply to claims filed with the Superior Court Division under this section.

(c) Should a city waive its immunity from civil liability pursuant to subsection (a) of this section, it may purchase liability insurance without the purchase being deemed a waiver of sovereign immunity as set forth by G.S. 160A-485. No document or exhibit that 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."

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

SENATE BILL 859:
Tort Claims Act/Local Gov. Opt-in

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	June 23, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 859 would allow a city with a population of 500,000 or more (Charlotte) to waive its immunity from civil liability in tort by passing a resolution expressing its intent to waive its sovereign immunity pursuant to the Tort Claims Act.***

CURRENT LAW: Generally, the common law rule of "sovereign immunity" provides that the government is immune from suit. Under G.S. 160A-485, a city is authorized to waive its immunity from civil liability in tort by the act of purchasing liability insurance. Immunity is waived only to the extent that the city is indemnified by the insurance contract from tort liability. A "tort" is an injury to another person or to property, which is compensable under the law. To give rise to a legal claim in tort, there must be a legal duty of care to another person; there must be a breach of that duty; the claimant must have suffered damages; and the damages must have been proximately caused by the breach of duty.

Article 31 of Chapter 143 of the General Statutes ("The Tort Claims Act") provides the statutory framework for an individual to sue the State for the negligent actions of an employee of the State. The Tort Claims Act partially waives sovereign immunity, allowing individuals to sue the State for injuries proximately caused by the negligent actions of a State employee acting within the scope of his or her employment. This means that if a person is injured by the State by a negligent or tortious act, the person is entitled to recover from the State in the same manner that the person would have been able to recover if the injury had been caused by a private person. Claims under the Tort Claims Act are subject to the normal defenses, including the defense of contributory negligence. Unlike claims against private parties, claims under the Tort Claims Act are limited to $1,000,000 per claimant. Cases brought under the Tort Claims Act are heard before the Industrial Commission, not in the general court system. Appeals from decisions of the Industrial Commission are made directly to the Court of Appeals. Claims awarded are generally paid by the agency the employee works for and are defended by the Attorney General's office.

BILL ANALYSIS: Senate Bill 859 would allow a city with a population of 500,000 or more (Charlotte) to waive its immunity from civil liability in tort by passing a resolution expressing its intent to waive its sovereign immunity pursuant to the Tort Claims Act. The bill specifies modifications of the Tort Claims Act that would apply to the waiver of sovereign immunity by the city. The bill would place jurisdiction for trying tort claims against the city in the superior court of the county in which the city is principally located (rather than in the Industrial Commission as the Tort Claims Act provides). The city would be solely responsible for the expenses of its legal representation and for payment of claims for which it is found to be liable. The bill would permit the city to purchase liability insurance without waiving its sovereign immunity, and would prohibit the introduction to the jury of evidence concerning the city's insurance and also prohibit any inference to the jury that the city's potential liability is covered by insurance. The bill would require that all matters related to insurance be determined by the judge without resort to a jury, unless the city requests a jury trial on those issues.

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

S859-SMRV-105(e1) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

SB 859 A BILL TO BE ENTITLED AN ACT TO ALLOW CITIES WITH POPULATION GREATER THAN FIVE HUNDRED THOUSAND TO BE SUBJECT TO THE STATE TORT CLAIMS ACT WITH CERTAIN MODIFICATIONS.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 759
Judiciary I Committee Substitute Adopted 4/28/09

Short Title: Modify DWI Checking Station Requirements. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE LAW ENFORCEMENT AGENCIES TO DESIGNATE PATTERNS IN WRITING FOR STOPPING VEHICLES AT CHECKING STATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-16.3A reads as rewritten:

"**§ 20-16.3A. Checking stations and roadblocks.**

(a) A law-enforcement agency may 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) Repealed by Session Laws 2006-253, s. 4, effective December 1, 2006, and applicable to offenses committed on or after that date.

(2) Designate in advance the ~~pattern~~ pattern, in writing, both for stopping vehicles and for requesting drivers that are stopped to produce drivers license, registration, or insurance information.

(2a) Operate under a written policy that provides guidelines for the ~~pattern, which need not be in writing.~~pattern. The policy may be either the agency's own policy, or if the agency does not have a written policy, it may be the policy of another law enforcement agency, and may include contingency provisions for altering either pattern if actual traffic conditions are different from those anticipated, but no individual officer may be given discretion as to which vehicle is stopped or, of the vehicles stopped, which driver is requested to produce drivers license, registration, or insurance information. If officers of a law enforcement agency are operating under another agency's policy, it must be stated in writing.

(3) Advise the public that an authorized checking station is being operated by having, at a minimum, one law enforcement vehicle with its blue light in operation during the conducting of the checking station.

(b) An officer who determines there is a reasonable suspicion that an occupant has violated a provision of this Chapter, or any other provision of law, may detain the driver to further investigate in accordance with law. The operator of any vehicle stopped at a checking station established under this subsection may be requested to submit to an alcohol screening test under G.S. 20-16.3 if during the course of the stop the officer determines the driver had previously consumed alcohol or has an open container of alcoholic beverage in the vehicle. The officer so requesting shall consider the results of any alcohol screening test or the driver's refusal in determining if there is reasonable suspicion to investigate further.



(c) Law enforcement agencies may conduct any type of checking station or roadblock as long as it is established and operated in accordance with the provisions of the United States Constitution and the Constitution of North Carolina.

(d) The placement of checkpoints should be random or statistically indicated, and agencies shall avoid placing checkpoints repeatedly in the same location or proximity. This subsection shall not be grounds for a motion to suppress or a defense to ~~any~~ an offense arising out of the operation of a checking station."

SECTION 2. This act becomes effective December 1, 2009, and applies to checking stations conducted on or after that date.

SENATE BILL 759:
Modify DWI Checking Station Requirements

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	June 24, 2009
Introduced by:	Sen. McKissick	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	Second Edition		

SUMMARY: Senate Bill 759 requires law enforcement agencies to designate patterns in writing for stopping vehicles at checking stations.

BILL ANALYSIS: Senate Bill 759 amends G.S. 20-16.3A(a) to provide that when a law enforcement agency conducts a motor vehicle checking station, the pattern for stopping vehicles and for requesting drivers that are stopped to produce drivers license, registration, or insurance information must be in writing. Current law requires that there must be a written policy that provides guidelines for establishing a pattern, but the pattern for each individual checking station does not have to be in writing.

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to checking stations conducted on or after that date.

Research Division *O. Walker Reagan, Director* *(919) 733-2578*

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 759 A BILL TO BE ENTITLED AN ACT TO REQUIRE LAW ENFORCEMENT AGENCIES TO DESIGNATE PATTERNS IN WRITING FOR STOPPING VEHICLES AT CHECKING STATIONS.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 1076
Judiciary II Committee Substitute Adopted 5/7/09

Short Title: Modify Crim. Justice Partnership Program. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CRIMINAL JUSTICE PARTNERSHIP PROGRAM TO ALLOW COMMUNITY-LEVEL OFFENDERS TO BE SERVED BY THE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-273.4 reads as rewritten:

"**§ 143B-273.4. Eligible population.**

(a) An eligible offender is an adult offender who was convicted of a misdemeanor or a felony offense and received a nonincarcerative sentence of a community punishment or an intermediate punishment or is serving a term of parole or post-release supervision after serving an active sentence of imprisonment.

(b) The priority populations for programs funded under this Article shall be offenders sentenced to intermediate punishments."

SECTION 2. This act becomes effective December 1, 2009.

SENATE BILL 1076:
Modify Crim. Justice Partnership Program

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	June 24, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Susan Sitze* Committee Counsel
Analysis of:	PCS to Second Edition S1076-CSLL-50		

SUMMARY: Senate Bill 1076 would amend the law concerning the Criminal Justice Partnership Program to make offenders sentenced to a community punishment eligible for the program.

CURRENT LAW: The Criminal Justice Partnership Program is a State-County partnership intended to provide supplemental community-based corrections programs which expand sentencing options by adding community-based corrections programs for offenders receiving a non-incarcerative sentence, and which appropriately punish criminal behavior and provide effective rehabilitative services. The goals of the community-based programs include the following:

- To reduce recidivism;
- To reduce the number of probation revocations;
- To reduce alcoholism and other drug dependencies among offenders; and
- To reduce the cost to the State and the counties of incarceration.

An offender is eligible for the program if he or she is sentenced to an intermediate punishment or is serving a term of parole or post-release supervision after serving an active sentence of imprisonment.

BILL ANALYSIS: Senate Bill 1076 would amend the law concerning the Criminal Justice Partnership Program to make offenders sentenced to a community punishment eligible for the program if the division of Community Corrections determines that the offender would benefit from program participation based upon the results of a risk assessment. Community punishments include such things as supervised or unsupervised probation, outpatient drug/alcohol treatment, community service, restitution, and fines. Most misdemeanors and some Class H and Class I felonies are subject to community punishment.

EFFECTIVE DATE: The bill would become effective December 1, 2009.

**Brenda Carter, Committee Counsel, contributed substantially to this summary.*

S1076-SMSA-107(CSLL-50) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1076
Judiciary II Committee Substitute Adopted 5/7/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1076-CSLL-50 [v.3]

6/23/2009 3:40:36 PM

Short Title: Modify Crim. Justice Partnership Program. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CRIMINAL JUSTICE PARTNERSHIP PROGRAM TO ALLOW CERTAIN COMMUNITY-LEVEL OFFENDERS TO BE SERVED BY THE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-273.4 reads as rewritten:

"**§ 143B-273.4. Eligible population.**

(a) An eligible offender is an adult offender who was convicted of a misdemeanor or a felony offense ~~and received~~ and:

(1) Received a nonincarcerative sentence of a community punishment, if the Division of Community Corrections determines that the offender would benefit from program participation, based upon the results of a risk assessment;

(2) Received a nonincarcerative sentence of an intermediate ~~punishment~~ punishment; or

(3) ~~is~~ Is serving a term of parole or post-release supervision after serving an active sentence of imprisonment.

(b) The priority populations for programs funded under this Article shall be offenders sentenced to intermediate punishments."

SECTION 2. This act becomes effective December 1, 2009.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 1076 A BILL TO BE ENTITLED AN ACT TO MODIFY THE CRIMINAL JUSTICE PARTNERSHIP PROGRAM TO ALLOW COMMUNITY-LEVEL OFFENDERS TO BE SERVED BY THE PROGRAM.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill and recommendation that the House committee substitute bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 1078

Short Title:	Delay Bond/Probationer Arrested for Felony.	(Public)
Sponsors:	Senators Snow and Kinnaird.	
Referred to:	Judiciary II.	

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PROBATIONER WHO IS ARRESTED AND CHARGED WITH THE COMMISSION OF A FELONY SHALL BE TEMPORARILY DETAINED WITHOUT BOND UNTIL THE COURT HAS SUFFICIENT INFORMATION TO DETERMINE WHETHER THE PROBATIONER'S RELEASE POSES A DANGER TO THE PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1345(b) reads as rewritten:

"(b) Bail Following Arrest for Probation Violation. – If at any time during the period of probation the probationer is arrested for a violation of any of the conditions of probation, he must be taken without unnecessary delay before a judicial official to have conditions of release pending a revocation hearing set in the same manner as provided in G.S. 15A-534. If the probationer has been convicted of an offense at any time that requires registration under Article 27A of Chapter 14 of the General Statutes or an offense that would have required registration but for the effective date of the law establishing the Sex Offender and Public Protection Registration Program, the court must make a finding that the probationer is not a danger to the public prior to release with or without bail. If a probationer is arrested and charged with the commission of a felony, the probationer shall not be released with or without bail until the court makes a finding that the probationer is not a danger to the public. If a probationer is arrested and charged with the commission of a felony, and the court finds that it has insufficient information to determine whether the probationer poses a danger to the public, then the probationer shall be detained without bond, not to exceed seven working days from the date of the arrest, until the court is provided sufficient information to determine whether the probationer poses a danger to the public."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

SENATE BILL 1078:
Delay Bond/Probationer Arrested for Felony

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	June 24, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Susan Sitze* Committee Counsel
Analysis of:	PCS to First Edition S1078-CSSA-55		

SUMMARY: The PCS for Senate bill 1078 would prevent the release, with or without bail, of a defendant arrested and charged with the commission of a felony while they are on probation until the judicial official determines whether the defendant poses a danger to the public. The PCS would also deny release pending a revocation hearing to a probationer charged with a violation of probation who has a pending felony charge, if the judicial official determines that the probationer poses a danger to the public.

CURRENT LAW: G.S. 15A-533 requires that any person charged with a noncapital offense must have conditions of pretrial release determined pursuant to G.S. 15A-534.

With regard to bail following arrest for a probation violation, GS 15A-1345 provides that if at any time during a period of probation a probationer is arrested for a violation of a condition of probation, the probationer must be taken before a judicial official to have conditions of release pending a revocation hearing set. In 2008, the General Assembly amended this statute to provide that if the probationer has been convicted of an offense requiring registration on the sex offender registry, the court must make a finding that the probationer is not a danger to the public prior to release with or without bail.

BILL ANALYSIS:

Section 1 of the bill amends G.S. 15A-534 to provide that when a defendant is charged with a felony and the defendant is currently on probation for a prior offense, the judicial official shall determine whether the defendant poses a danger to the public before imposing conditions of pretrial release. If the judicial official determines the defendant is a danger to the public, the judicial official must impose a secured appearance bond as a condition of pretrial release. If there is insufficient information for the judicial official to make a determination, the defendant may be retained in custody up to 7 days from the date of arrest in order for the judicial official to obtain sufficient information to determine whether the defendant poses a danger to the public. If the judicial official is unable to obtain sufficient information to make a determination, that fact shall be recorded in writing and, no later than 7 days from the date of arrest, conditions of pretrial release shall be set as otherwise provided in statute.

Section 2 of the bill amends G.S. 15A-1345 to provide that when a probationer is charged with a violation of probation, and the probationer has a pending charge for a felony offense, the judicial official must determine whether the probationer is a danger to the public before setting conditions of release. If the judicial official determines that the probationer is a danger to the public, release pending the revocation hearing shall be denied. If there is insufficient information for the judicial official to make a determination, the probationer may be retained in custody up to 7 days from the date of arrest in order for the judicial official to obtain sufficient information to determine whether the probationer poses a danger to the public. If the judicial official is unable to obtain sufficient information to make a determination, that fact shall be recorded in writing and, no later than 7 days from the date of arrest, conditions of release shall be set as otherwise provided in statute.

The language in this section also clarifies the application of similar language added in 2008 regarding sex offenders charged with probation violations.

EFFECTIVE DATE: This bill would become effective December 1, 2009, and apply to offenses committed on or after that date.

**Jennifer McGinnis, Staff Attorney, contributed substantially to this summary.*

S1078-SMSA-108(CSSA-55) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1078
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1078-CSSA-55 [v.6]

6/24/2009 10:31:51 AM

Short Title: Delay Bond/Probationer Arrested for Felony. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT WHEN A PROBATIONER IS ARRESTED AND CHARGED WITH THE COMMISSION OF A FELONY A JUDICIAL OFFICIAL MUST DETERMINE WHETHER THE PROBATIONER POSES A DANGER TO THE PUBLIC BEFORE DETERMINING CONDITIONS OF PRETRIAL RELEASE, AND TO PROVIDE THAT WHEN A PROBATIONER IS CHARGED WITH A VIOLATION OF PROBATION, AND HAS A PENDING FELONY CHARGE, A JUDICIAL OFFICIAL MUST DETERMINE WHETHER THE PROBATIONER POSES A DANGER TO THE PUBLIC AND IF THE PROBATIONER IS A DANGER TO THE PUBLIC THE JUDICIAL OFFICIAL MUST DENY RELEASE ON THE PROBATION VIOLATION CHARGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534 is amended by adding a new subsection to read:

"(d2) When conditions of pretrial release are being imposed on a defendant who is charged with a felony offense, and the defendant is currently on probation for a prior offense, the judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing. If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) in subsection (a) of this section instead of condition (1), (2), or (3). If the judicial official finds that there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody not more than seven days from the date of the arrest in order for the judicial official to obtain sufficient information to determine whether the defendant poses a danger to the public. If the judicial official is unable to obtain sufficient information to determine whether the defendant poses a danger to the public, the judicial official must record that fact in writing and, no later than seven days from the date of arrest, shall impose conditions of pretrial release as otherwise provided in this section."

SECTION 2. G.S. 15A-1345(b) reads as rewritten:

"(b) Bail Following Arrest for Probation Violation. – If at any time during the period of probation the probationer is arrested for a violation of any of the conditions of probation, he must be taken without unnecessary delay before a judicial official to have conditions of release pending a revocation hearing set in the same manner as provided in G.S. 15A-534. ~~If~~ Notwithstanding the provisions of G.S. 15A-534, if the probationer is arrested for a violation of any of the conditions of probation and, (i) has a pending charge for a felony offense, or (ii) has

been convicted of an offense at any time that requires registration under Article 27A of Chapter 14 of the General Statutes or an offense that would have required registration but for the effective date of the law establishing the Sex Offender and Public Protection Registration Program, ~~the court must make a finding that the probationer is not a danger to the public prior to release with or without bail.~~the judicial official shall determine whether the probationer poses a danger to the public prior to imposing conditions of release and must record that determination in writing. If the judicial official determines that the probationer poses a danger to the public, the probationer shall be denied release pending a revocation hearing. If the judicial official finds that there is insufficient information to determine whether the probationer poses a danger to the public, then the probationer shall be retained in custody not more than seven days from the date of the arrest for the probation violation in order for the judicial official to obtain sufficient information to determine whether the probationer poses a danger to the public. If the judicial official is unable to obtain sufficient information to determine whether the probationer poses a danger to the public, the judicial official must record that fact in writing and, no later than seven days from the date of arrest, shall impose conditions of release as otherwise provided in this subsection."

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

SB 1078 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PROBATIONER WHO IS ARRESTED AND CHARGED WITH THE COMMISSION OF A FELONY SHALL BE TEMPORARILY DETAINED WITHOUT BOND UNTIL THE COURT HAS SUFFICIENT INFORMATION TO DETERMINE WHETHER THE PROBATIONER'S RELEASE POSES A DANGER TO THE PUBLIC.

☒ With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the House committee substitute bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

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

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

2009-2010

HOUSE WAYS & MEANS/BROADBAND CONNECTIVITY

MINUTES

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, July 1, 2009

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, July 1, 2009, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates; Representatives Kelly Alexander, Lucy Allen, Angela Bryant, Jim Gulley, Phil Haire, Dewey Hill, Mark Hilton, Sarah Stevens and Joe Tolson. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Seitz. House Sergeant-at-Arms assisting: Bob Rossi and Marvin Lee. House Pages: Sarah Thompson, Michelle Fogarty, Caroline Weller, Angela Vogler, Meredith Abernathy and Macy Smith. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. The following bills were placed before the Committee:

Senate Bill 1017-A BILL TO BE ENTITLED: an act to enhance protections against identity theft and to protect the credit of crime victims during the pendency of crime victims' compensation fund applications and appeals. Rep. Haire moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Stein to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 3*)

Senate Bill 851-A BILL TO BE ENTITLED: an act to allow district courts to supervise defendants convicted in superior court who are assigned to drug treatment courts or problem-solving courts. The Chair called upon the bill sponsor Rep. Vaughan to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Bryant was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 4*)

Senate Bill 853-A BILL TO BE ENTITLED: an act to provide that an attorney making a motion for appropriate relief, whether by oral or written motion, must certify in writing to the court that the attorney has reviewed the trial transcript and has notified and consulted with or has made a good faith effort to notify and consult

with both the attorney who initially prosecuted the case and the defense attorney who initially represented the defendant of the motion and to require that the certification appear in writing on the motion. Rep. Bryant moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Vaughan to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Haire was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 5*)

Senate Bill 1077-A BILL TO BE ENTITLED: an act to expand the authority delegated to probation officers in order to make intermediate sanctions available for an offender sentenced to community punishment if the risk assessment justifies those sanctions. The Chair called upon the bill sponsor Rep. Snow to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Haire was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 6*)

Senate Bill 929-A BILL TO BE ENTITLED: an act to: (1) amend requirements applicable to and clarify sanctions that may be imposed in conjunction with motions to set aside forfeitures; and (2) provide that a court may refuse to set aside a bond forfeiture only if, before executing the bond, the surety or bail agent had actual notice of a defendant's failure to appear on two or more prior occasions in the case for which the bond was executed. Rep. Coates moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Berger to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Bryant was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 7*)

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 2:29 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, July 1, 2009
1:00 PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **Senate Bills**

1.	SB 1017	Enhance Protections against Identity Theft.	Senator Stein
2.	SB 851	Supervision of Certain Defendants.	Senator Vaughan
3.	SB 853	Motion for Appropriate Relief/New Requirement.	Senator Vaughan
4.	SB 1077	Expand Parole Officers' Delegated Authority.	Senator Snow
5.	SB 929	No Set Aside of Bond Forfeit/Actual Notice.	Senator Berger

4. **Adjourn**

VISITOR REGISTRATION SHEET

WAYS + MEANS — 7-1-09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Todd Burk	NCAJ
Pam Moore	DOC
Mildred Spearman	NCDOC
John Madler	NC Sentencing Commission
Frank Womble	NCSBA
Joe Williams	Atty
Debra DeCamillis	UNC-IOG
MC Hollis	Atty
CS Hollis	T & T Bates
Lauren Whaley	NC Credit Union League

VISITOR REGISTRATION SHEET

Ways & Means — 7/1/09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Blake	NCBAA
Paula B	AOC
Denise Todd	AOC
Carri Nunnis	Guilford Co. Drug Court
Wheaton Casey	Pretrial Services
Susan Burch	Judge - Guilford County
Andy Ellen	NCLMA
Jennifer Flynn	CDIA
Jeff Wansley	EQUIFAX
Ken Melton	K.M.A.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 1017
Judiciary I Committee Substitute Adopted 5/12/09

Short Title: Enhance Protections Against Identity Theft. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ENHANCE PROTECTIONS AGAINST IDENTITY THEFT AND TO PROTECT THE CREDIT OF CRIME VICTIMS DURING THE PENDENCY OF CRIME VICTIMS COMPENSATION FUND APPLICATIONS AND APPEALS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-63 reads as rewritten:

"**§ 75-63. Security freeze.**

(a) A consumer may place a security freeze on the consumer's credit report by making a request ~~in writing by certified mail~~ to a consumer reporting agency in accordance with this subsection. 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.~~report, provided that the consumer reporting agency does not state or otherwise imply to the third party that the consumer's security freeze reflects a negative credit score, history, report, or rating. A consumer reporting agency shall place a security freeze on a consumer's credit report if the consumer requests a security freeze by any of the following methods:

(1) First-class mail.

(2) Telephone call.

(3) Secure Web site or secure electronic mail connection.

(a1) Notwithstanding any other provision of law, consumer reporting agencies that assemble or evaluate information about consumers in this State shall create and maintain a shared Web site and toll-free number that a consumer can contact to request a security freeze and actions related to a security freeze. A request made via this telephone number or Web site shall be considered made to all credit reporting agencies and shall trigger all applicable provisions of this section with respect to each consumer reporting agency. A consumer reporting agency that receives a request for a security freeze from a consumer shall communicate that request to the other consumer reporting agencies within three days of receipt of the request. Once a consumer reporting agency receives such a communication from a credit reporting agency in accordance with this subsection, all applicable provisions of this section shall be triggered with respect to that consumer reporting agency as if the consumer reporting agency received notice electronically.

(b) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than ~~five~~ three business days after receiving a written request from the

~~consumer.~~consumer by mail. A consumer reporting agency that receives such a request electronically or by telephone shall comply with the request within 15 minutes of receiving the request.

(c) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within ~~10~~ three 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.~~time, or to a specific party, or for permanently lifting the freeze.

(d) If the consumer wishes to allow the consumer's credit report to be accessed for a specific period of time or by a specific party while a freeze is in place, the consumer shall contact the consumer reporting ~~agency,~~agency by mail, phone, or electronically, request that the freeze be ~~temporarily lifted,~~ lifted or lifted with respect to a specific party, 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 third party who is authorized to receive the consumer credit report or the time period for which the report shall be available to users of the credit report.

(d1) A consumer reporting agency receiving a request under subsection (d) of this section shall remove a security freeze within 15 minutes of receiving a request for removal if the request is made by phone or electronically, or within three business days of receiving a request for removal from the consumer who provides the request by mail.

(e) A consumer reporting agency ~~may develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process~~ that receives a request from a consumer to temporarily lift a freeze for a specific period of time or to a specific third party on a credit report pursuant to subsection (d) of this section ~~in an expedited manner.~~shall communicate that request to the other consumer reporting agencies within three days of receipt of the request. Once a consumer reporting agency receives such a communication from a credit reporting agency, all applicable provisions of this section shall be triggered with respect to that consumer reporting agency as if the consumer reporting agency received notice electronically.

(f) A consumer reporting agency that receives a request by mail 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. A consumer reporting agency that receives such a request electronically or by telephone shall comply with the request within 15 minutes of receiving the request.

(g) A consumer reporting agency shall ~~remove or temporarily lift~~remove, temporarily lift, or lift with respect to a specific third party, a freeze placed on a consumer's credit report only in the following cases:

(1) Upon the consumer's request, pursuant to subsections (d) or (j) of this section.

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subdivision, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(h) If a third party requests access to a consumer credit report on which a security freeze is in effect and this request is in connection with an application for credit or any other

use and the consumer does not allow the consumer's credit report to be accessed for that specific period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze pursuant to this section, the consumer reporting agency shall disclose to the consumer the process of placing and temporarily lifting a security freeze and the process for allowing access to information from the consumer's credit report for a specific period of time or to a specific third party while the security freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be temporarily lifted for a specific period of time or to a specific third party or removed. ~~A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides all of the following:~~

~~(1) Proper identification.~~

~~(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c) of this section.~~

(k) A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(l) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

(1) A person, or the person's subsidiary, affiliate, agent, subcontractor, or assignee with whom the consumer has, or prior to assignment had, an account, contract, or debtor-creditor relationship for the purposes of reviewing the active account or collecting the financial obligation owing for the account, contract, or debt.

(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (d) of this section for purposes of facilitating the extension of credit or other permissible use.

(3) Any person acting pursuant to a court order, warrant, or subpoena.

(4) A state or local agency, or its agents or assigns, which administers a program for establishing and enforcing child support obligations.

(5) A state or local agency, or its agents or assigns, acting to investigate fraud, including Medicaid fraud, or acting to investigate or collect delinquent taxes or assessments, including interest and penalties, unpaid court orders, or to fulfill any of its other statutory responsibilities.

(6) A federal, state, or local governmental entity, including law enforcement agency, court, or their agent or assigns.

(7) A person for the purposes of prescreening as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.

(8) Any person for the sole purpose of providing for a credit file monitoring subscription service to which the consumer has subscribed.

(9) A consumer reporting agency for the purpose of providing a consumer with a copy of the consumer's credit report upon the consumer's request.

(10) Any depository financial institution for checking, savings, and investment accounts.

(11) Any property and casualty insurance company for use in setting or adjusting a rate, adjusting a claim, or underwriting for property and casualty insurance purposes.

(12) A person for the purpose of furnishing or using credit reports for employment purposes pursuant to 15 U.S.C. § 1681b(b).

(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,~~A consumer reporting agency shall not charge a fee to put a security freeze in place, remove a freeze, or lift a freeze pursuant to subsection (d) of this section, provided that any such request is made electronically. If a request to put a security freeze in place is made by telephone or by mail, a consumer reporting agency may charge a fee to a consumer not to exceed three dollars ($3.00), except that a consumer reporting agency may not charge any fee to a consumer over the age of 62, 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.~~person, or to the victim's spouse. A consumer reporting agency shall not charge an additional fee to a consumer who requests to temporarily lift for a specific period of time or to a specific third party, reinstate, or remove a security freeze. A consumer reporting agency shall not charge a consumer for a onetime reissue of a replacement personal identification number. A consumer reporting agency may charge a fee not to exceed three dollars ($3.00) to provide any subsequent replacement personal identification number.

(o1) A parent or guardian may inquire of a consumer reporting agency as to the existence of a credit report for the minor of the parent or guardian. If a report for the minor exists, the parent or guardian shall have the authority to institute a security freeze for that minor in accordance with the provisions of this section and to take any other actions this section authorizes a consumer to take, with respect to the minor's credit report. A consumer reporting agency shall comply with such a request. If a credit report for the minor does not exist, a consumer reporting agency has no obligation to create one.

(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~~ can be requested in writing by ~~certified mail.~~first-class mail, by telephone, or electronically. You may also request a freeze by visiting the following Web site: [URL] or calling the following telephone number: [NUMBER].

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~~ three business ~~days.~~days if you request it by mail, or within 15 minutes if you request it by telephone or electronically. When you place a security freeze on your credit report, within ~~10~~ three business days, you will be ~~provided~~ sent a personal identification number or a password to use when you want to remove ~~or lift temporarily the security freeze.~~the security freeze, temporarily lift it, or lift it with respect to a particular third party.

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~~freeze, temporarily lift a freeze, or lift a freeze with respect to a particular third party 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.~~report, or the third party with respect to which you want to lift the freeze.

A consumer reporting agency that receives a request from you to temporarily lift a freeze or to lift a freeze with respect to a particular third party on a credit report shall comply with the request no later than three business days after receiving the ~~request.~~request by mail and no later than 15 minutes after receiving a request by telephone or electronically. A consumer reporting agency may charge you up to ~~ten dollars ($10.00)~~three dollars ($3.00) ~~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.~~to institute a freeze if your request is made by telephone or by mail. A consumer reporting agency may not charge you any amount to freeze, remove a freeze, temporarily lift a freeze, or lift a freeze with respect to a particular third party, if any of the following are true:

(1) Your request is made electronically.

(2) You are over the age of 62.
(3) You are the victim of identity theft and have submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of your identifying information by another person, or you are the spouse of such a 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."

SECTION 2. G.S. 75-65 reads as rewritten:

"**§ 75-65. Protection from security breaches.**

(a) Any business that owns or licenses personal information of residents of North Carolina or any business that conducts business in North Carolina that owns or licenses personal information in any form (whether computerized, paper, or otherwise) shall provide notice to the affected person that there has been a security breach following discovery or notification of the breach. The disclosure notification shall be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (c) of this section, and consistent with any measures necessary to determine sufficient contact information, determine the scope of the breach and restore the reasonable integrity, security, and confidentiality of the data system. For the purposes of this section, personal information shall not include electronic identification numbers, electronic mail names or addresses, Internet account numbers, Internet identification names, parent's legal surname prior to marriage, or a password unless this information would permit access to a person's financial account or resources.

(b) Any business that maintains or possesses records or data containing personal information of residents of North Carolina that the business does not own or license, or any business that conducts business in North Carolina that maintains or possesses records or data containing personal information that the business does not own or license shall notify the owner or licensee of the information of any security breach immediately following discovery of the breach, consistent with the legitimate needs of law enforcement as provided in subsection (c) of this section.

(c) The notice required by this section shall be delayed if a law enforcement agency informs the business that notification may impede a criminal investigation or jeopardize national or homeland security, provided that such request is made in writing or the business documents such request contemporaneously in writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. The notice required by this section shall be provided without unreasonable delay after the law enforcement agency communicates to the business its determination that notice will no longer impede the investigation or jeopardize national or homeland security.

(d) The notice shall be clear and conspicuous. The notice shall include ~~a description~~all of the following:

(1) ~~The~~A description of the incident in general terms.
(2) ~~The~~A description of the type of personal information that was subject to the unauthorized access and acquisition.
(3) ~~The~~A description of the general acts of the business to protect the personal information from further unauthorized access.
(4) A telephone number for the business that the person may call for further information and assistance, if one exists.
(5) Advice that directs the person to remain vigilant by reviewing account statements and monitoring free credit reports.

(6) The toll-free numbers and addresses for the major consumer reporting agencies.

(7) The toll-free numbers, addresses, and Web site addresses for the Federal Trade Commission and the North Carolina Attorney General's Office, along with a statement that the individual can obtain information from these sources about preventing identity theft.

(e) For purposes of this section, notice to affected persons may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, for those persons for whom it has a valid e-mail address and who have agreed to receive communications electronically if the notice provided is consistent with the provisions regarding electronic records and signatures for notices legally required to be in writing set forth in 15 U.S.C. § 7001.

(3) Telephonic notice provided that contact is made directly with the affected persons.

(4) Substitute notice, if the business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000) or that the affected class of subject persons to be notified exceeds 500,000, or if the business does not have sufficient contact information or consent to satisfy subdivisions (1), (2), or (3) of this subsection, for only those affected persons without sufficient contact information or consent, or if the business is unable to identify particular affected persons, for only those unidentifiable affected persons. Substitute notice shall consist of all the following:

a. E-mail notice when the business has an electronic mail address for the subject persons.

b. Conspicuous posting of the notice on the Web site page of the business, if one is maintained.

c. Notification to major statewide media.

(e1) In the event a business provides notice to an affected person pursuant to this section, the business shall notify without unreasonable delay the Consumer Protection Division of the Attorney General's Office of the nature of the breach, the number of consumers affected by the breach, steps taken to investigate the breach, steps taken to prevent a similar breach in the future, and information regarding the timing, distribution, and content of the notice.

(f) In the event a business provides notice to more than 1,000 persons at one time pursuant to this section, the business shall notify, without unreasonable delay, the Consumer Protection Division of the Attorney General's Office and all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. § 1681a(p), of the timing, distribution, and content of the notice.

(g) Any waiver of the provisions of this Article is contrary to public policy and is void and unenforceable.

(h) A financial institution that is subject to and in compliance with the Federal Interagency Guidance Response Programs for Unauthorized Access to Consumer Information and Customer Notice, issued on March 7, 2005, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, and any revisions, additions, or substitutions relating to said interagency guidance, shall be deemed to be in compliance with this section.

(i) A violation of this section is a violation of G.S. 75-1.1. No private right of action may be brought by an individual for a violation of this section unless such individual is injured as a result of the violation.

(j) Causes of action arising under this Article may not be assigned."

SECTION 3.(a) G.S. 132-1.10 is amended by adding a new subsection to read:

"(f1) Without a request made pursuant to subsection (f) of this section, a register of deeds or clerk of court may remove from an image or copy of an official record placed on a register of deeds' or clerk of court's Internet Web site available to the general public, or placed on an Internet Web site available to the general public used by a register of deeds or clerk of court to display public records, a person's social security, employer taxpayer identification, drivers license, State identification, passport, checking account, savings account, credit card, debit card number, date of birth, or personal identification (PIN) code or passwords contained in that official record."

SECTION 3.(b) This section is effective when this act becomes law.

SECTION 4.(a) G.S. 132-1.10 is amended by adding a new subsection to read:

"(f2) Registers of deeds and clerks of court shall apply optical character recognition technology and other reasonably available technology to official records placed on Internet Web sites available to the general public in order to, in good faith, identify and redact social security and drivers license numbers."

SECTION 4.(b) G.S. 132-1.10(h) reads as rewritten:

"(h) Any affected person may petition the court for an order directing compliance with this section. No liability shall accrue to a register of deeds or clerk of court or to his or her agent for any action related to provisions of this section or for any claims or damages that might result from a social security number or other identifying information on the public record or on a register of deeds' or clerk of court's Internet Web site available to the general public or an Internet Web site available to the general public used by a register of deeds or clerk of ~~court.~~ court, provided a register of deeds or clerk of court complies with subsection (f2) of this section."

SECTION 4.(c) This section becomes effective July 1, 2011.

SECTION 5. G.S. 15B-2 reads as rewritten:

"**§ 15B-2. Definitions.**

As used in this Article, the following definitions apply, unless the context requires otherwise:

(1) ~~"Allowable expense" means reasonable~~ Allowable expense. – Reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, medically-related property, and other remedial treatment and care.

Allowable expense includes a total charge not in excess of five thousand dollars ($5,000) for expenses related to funeral, cremation, and burial, including transportation of a body, but excluding expenses for flowers, gravestone, and other items not directly related to the funeral service.

Allowable expense for medical care, counseling, rehabilitation, medically-related property, and other remedial treatment and care of a victim shall be limited to sixty-six and two-thirds percent (66 2/3%) of the amount usually charged by the provider for the treatment or care. By accepting the compensation paid as allowable expense pursuant to this subdivision, the provider agrees that the compensation is payment in full for the treatment or care and shall not charge or otherwise hold a claimant financially responsible for the cost of services in addition to the amount of allowable expense.

(2) ~~"Claimant" means any~~Claimant. – Any of the following persons who claims an award of compensation under this Article:

a. A victim;

b. A dependent of a deceased victim;

c. A third person who is not a collateral source and who provided benefit to the victim or his family other than in the course or scope of his employment, business, or profession;

d. A person who is authorized to act on behalf of a victim, a dependent, or a third person described in subdivision c.

The claimant, however, may not be the offender or an accomplice of the offender who committed the criminally injurious conduct.

(3) ~~"Collateral source" means a~~ Collateral source. – A source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received or that is readily available to the victim or the claimant from any of the following sources:

a. The offender.

b. The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states.

c. Social Security, Medicare, or Medicaid.

d. State-required, temporary, nonoccupational disability insurance.

e. Worker's compensation.

f. Wage continuation programs of any employer.

g. Proceeds of a contract of insurance payable to the victim for loss that the victim sustained because of the criminally injurious conduct.

h. A contract providing prepaid hospital and other health care services, or benefits for disability.

i. A contract of insurance that will pay for expenses directly related to a funeral, cremation, and burial, including transportation of a body.

(4) ~~"Commission" means the~~Commission. – The Crime Victims Compensation Commission established by G.S. 15B-3.

(4a) Consumer reporting agency. – As defined in G.S. 75-61(4).

(4b) Credit report. – As defined in G.S. 75-61(3).

(5) ~~"Criminally injurious conduct" means conduct~~ Criminally injurious conduct. – Conduct that by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this State. Criminally injurious conduct includes conduct that amounts to an offense involving impaired driving as defined in G.S. 20-4.01(24a), and conduct that amounts to a violation of G.S. 20-166 if the victim was a pedestrian or was operating a vehicle moved solely by human power or a mobility impairment device. For purposes of this Article, a mobility impairment device is a device that is designed for and intended to be used as a means of transportation for a person with a mobility impairment, is suitable for use both inside and outside a building, and whose maximum speed does not exceed 12 miles per hour when the device is being operated by a person with a mobility impairment. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle when the conduct is punishable only as a violation of other provisions of Chapter 20 of the General Statutes. Criminally injurious conduct shall also include an act of terrorism, as defined in 18 U.S.C. § 2331, that is committed outside of the United States against a citizen of this State.

(6) ~~"Dependent" means an~~Dependent. – An individual wholly or substantially dependent upon the victim for care and support and includes a child of the victim born after his death.

(7) ~~"Dependent's economic loss" means loss~~Dependent's economic loss. – Loss after a victim's death of contributions of things of economic value to his dependents, not including services they would have received from the victim if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death.

(8) ~~"Dependent's replacement service loss" means loss~~Dependent's replacement service loss. – Loss reasonably incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death and not subtracted in calculating dependent's economic loss.

Dependent's replacement service loss will be limited to a 26-week period commencing from the date of the injury and compensation shall not exceed two hundred dollars ($200.00) per week.

(9) ~~"Director" means the~~Director. – The Director of the Commission appointed under G.S. 15B-3(g).

(10) ~~"Economic loss" means economic~~Economic loss. – Economic detriment consisting only of allowable expense, work loss, replacement services loss, and household support loss. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement service loss. Noneconomic detriment is not economic loss, but economic loss may be caused by pain and suffering or physical impairment.

(10a) ~~"Household support loss" means the~~ Household support loss. – The loss of support that a victim would have received from the victim's spouse for the purpose of maintaining a home or residence for the victim and the victim's dependents. A victim may be compensated fifty dollars ($50.00) per week for each dependent child. Compensation for household support loss shall not exceed three hundred dollars ($300.00) per week and shall be limited to 26 weeks commencing from the date of the injury. A victim may receive only one compensation for household support loss. Household support loss is only available to an unemployed victim whose spouse is the offender who committed the criminally injurious conduct that is the basis of the victim's claim under this act.

(11) ~~"Noneconomic detriment" means pain,~~ Noneconomic detriment. – Pain, suffering, inconvenience, physical impairment, or other nonpecuniary damage.

(12) ~~"Replacement services loss" means expenses~~Replacement services loss. – Expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

Replacement service loss will be limited to a 26-week period commencing from the date of the injury, and compensation may not exceed two hundred dollars ($200.00) per week.

(12a) ~~"Substantial evidence" means relevant~~Substantial evidence. – Relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

(13) ~~"Victim" means a~~Victim. – A person who suffers personal injury or death proximately caused by criminally injurious conduct.

(14) ~~"Work loss" means loss~~Work loss. – Loss of income from work that the injured person would have performed if he had not been injured and expenses reasonably incurred by him to obtain services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed by him, or by income he would have earned in available appropriate substitute work that he was capable of performing but unreasonably failed to undertake.

Compensation for work loss will be limited to 26 weeks commencing from the date of the injury, and compensation shall not exceed three hundred dollars ($300.00) per week. A claim for work loss will be paid only upon proof that the injured person was gainfully employed at the time of the criminally injurious conduct and, by physician's certificate, that the injured person was unable to work."

SECTION 6. Chapter 15B of the General Statutes is amended by adding a new section to read:

"**§ 15B-26. Crime victims credit protection.**

(a) A creditor that is owed money for services provided to a victim as a result of the criminally injurious conduct inflicted on the victim shall not communicate any information about the debt to a consumer reporting agency during the pendency of an application for an award filed pursuant to G.S. 15B-7 or during the pendency of an appeal from a decision related to such an application.

(b) The victim bears the burden of notifying the creditor that the debt is subject to subsection (a) of this section.

(c) A creditor may request monthly verification from the Commission that the application or appeal is still pending, and the Commission shall provide this verification."

SECTION 7. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 6.

"Credit Monitoring Services Act.

"**§ 75-123. Title.**

This Article shall be known and may be cited as the 'Credit Monitoring Services Act.'

"**§ 75-124. Definitions.**

The following definitions apply in this Article:

(1) Credit monitoring service. – Any person who offers, for a fee or compensation, to obtain, provide, or monitor a credit report on behalf of a consumer, or to assist a consumer in obtaining or monitoring the consumer's credit report, and provides or purports to provide the foregoing services. The term also includes any person who offers, for a fee or compensation, to obtain or provide a fraud alert on behalf of a consumer or to assist a consumer in obtaining such fraud alert.

(2) Consumer report. – As defined in G.S. 75-61(3).

(3) Consumer. – An individual.

(4) Fraud alert. – As defined in the federal Fair Credit Reporting Act, 15 U.S.C. § 1681c-1.

(5) Person. – Any individual, partnership, corporation, association, business establishment, or any other legal or commercial entity.

"**§ 75-125. Required disclosure.**

(a) Prior to the charging or collecting of any fee or compensation from a consumer for the obtaining, providing, or monitoring of the consumer's credit report on behalf of the consumer, a credit monitoring service shall provide the following disclosure to the consumer:

'Consumers Have the Right to Obtain a FREE Credit Report.

The federal Fair Credit Report Act (FCRA) requires each of the nationwide consumer reporting agencies (Equifax, Experian, and TransUnion) to provide you with a free copy of your credit report, at your request, once every 12 months. There are three ways to order your free annual credit report:

(1) Go to the Internet Web site www.annualcreditreport.com and complete the order form.

(2) Call toll-free, 1-877-322-8228, and request a report.

(3) Complete the Annual Credit Report Request Form, available at the Internet Web site www.annualcreditreport.com and mail it to:

Annual Credit Report Request Service
P.O. Box 105281
Atlanta, GA 30348-5281

You may order your reports from each of the three nationwide consumer reporting companies at the same time, or you can order your report from each of the companies one at a time.

There are other situations in which you may also be entitled to a free credit report:

(1) If a company takes adverse action against you, such as denying your application for credit, insurance, or employment, and you ask for your report within 60 days of receiving notice of the action.

(2) If you are unemployed and plan to look for a job within 60 days.

(3) If you are on welfare.

(4) If your report is inaccurate because of fraud, including identity theft.'

(b) The disclosure required by subsection (a) of this section shall be clear and conspicuous and shall be in writing.

(c) This section shall apply to consumer reporting agencies, as that term is defined in the federal Fair Credit Report Act, 15 U.S.C. § 1681a(f), to the extent not preempted by federal law.

(d) A supervised bank, credit union, or thrift offering a credit monitoring service that provides a description of a consumer's right to free credit reports under the federal Fair Credit Report Act and how to obtain those credit reports is deemed in compliance with this section.

(e) A violation of this section is a violation of G.S. 75-1.1."

SECTION 8. Except as otherwise provided, this act becomes effective October 1, 2009.

SENATE BILL 1017:
Enhance Protections Against Identity Theft

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary II	**Date:**	July 1, 2009
Introduced by:	Sen. Stein	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to Second Edition S1017-CSST-59 [v.7]		

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 1017 enhances protections against identity theft by expediting and simplifying the process of placing security freezes and temporary removals of those freezes on consumer credit reports; by requiring more information to be reported on notices of breaches of personal identifying information; by permitting Registers of Deeds and Clerks of Court to remove personal identification information from their public Web sites without requests; by protecting the credit of crime victims during the pendency of their crime victim's application; and by requiring a credit monitoring service to notify consumers of their right to a free credit report before charging a fee.***

CURRENT LAW:

G.S 75-63 allows a consumer to freeze access to the consumer's credit report held by a consumer reporting agency. A consumer reporting agency may charge up to $10 for placing a freeze, removing a freeze or temporarily lifting a freeze.

G.S. 75-65 requires businesses that own or license personal identifying information of NC residents to notify those persons of a security breach of the personal identification information.

G.S. 132-1.10 allows a person to request the Register of Deeds or Clerk of Court to remove any personal identifying information on a public record viewable from the public Web site of the Register of Deeds or Clerk of Court.

Article 1 of Chapter 15B of the General Statutes allows victims of crimes to seek compensation from the Crime Victims Compensation Fund for economic losses arising from the commission of a crime.

The Federal Fair Credit Reporting Act allows a consumer to receive a free credit report once every 12 months.

BILL ANALYSIS:

Section 1 of the Proposed Committee Substitute for Senate Bill 1017 would make various changes to G.S. 75-63, the security freeze section of the Identity Theft Protection Act. The bill would:

- Allow a consumer to request a security freeze on their credit report in three ways: first-class mail, telephone call, or electronically by use of a secure Web site or secure electronic mail connection.
- Require that requests to place a security freeze be made effective within 3 business days if the request is made in writing, or within 24 hours if the request is made electronically or by phone. Except in specified circumstances, the bill would require that requests to lift a security freeze for a specified period of time or to a specified party, or to permanently lift a freeze be made effective within 3 business days if the request is made in writing, or within 15 minutes if the request is made electronically or by phone.

- Prohibit consumer reporting agencies from charging a fee in response to an electronic request to place, remove or lift a freeze. A consumer reporting agency may charge a fee not to exceed $3 for placing a security freeze by telephone or mail, or for providing a second or subsequent personal identification number.
- Allow a parent or guardian of a minor to make inquiries concerning the existence of a credit report for the minor, and require the consumer reporting agency to make reasonable efforts to prevent providing a credit report on the minor.

Section 2 would require that any business that possesses personal identifying information of NC residents include in its notification to a person whose personal information is breached the applicable toll-free numbers and addresses for the major consumer reporting agencies, Federal Trade Commission and the NC Attorney General's Office. The business would also be required to notify the Consumer Protection Division of the Attorney General's Office of the nature of the breach, the number of consumers affected by the breach, and other specified information.

Section 3 would permit Registers of Deeds and Clerks of Court to remove personal identification information from their public Web sites without a request from a specific individual, and allow Registers of Deeds and Clerks of Court to utilize optical character recognition technology to identify and redact, in good faith, social security and driver's license numbers.

Section 4 would the Conference of Clerks of Superior Court to annually study and report to the Joint Legislative Commission on Governmental Operations on the status of counties and judicial districts as to whether the clerks of superior court or the registers of deeds are implementing the provisions in Section 3 of the bill regarding the removal of personal identification information from their public Web sites.

Section 5 would amend the definitions section of the Crime Victim's Compensation Act to define "consumer reporting agency" and "credit report" in the same manner as the terms are defined in the Identity Theft Protection Act

Section 6 would amend the Crime Victim's Compensation Act to protect the credit of crime victims during the pendency of victims compensation fund applications and appeals by prohibiting a creditor from reporting certain debts to a consumer reporting agency, provided the victim has notified the creditor of the pending compensation claim.

Section 7 would enact a Credit Monitoring Services Act, which would require a credit monitoring service (a person who provides consumer credit monitoring for a fee) to notify a consumer of their rights to a free credit report prior to collecting a fee for credit monitoring services. Failure to comply would constitute an unfair and deceptive trade practice under Chapter 75 of the General Statutes; making each violation subject to a civil penalty up to $5,000.

EFFECTIVE DATE: The bill would become effective October 1, 2009.

Erika Churchill, counsel to Senate Judiciary I, and Denise Huntley, Research Assistant, substantially contributed to this summary.

S1017-SMRV-107(CSST-59) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1017
Judiciary I Committee Substitute Adopted 5/12/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1017-CSST-59 [v.7]

7/1/2009 12:00:44 PM

Short Title: Enhance Protections Against Identity Theft. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ENHANCE PROTECTIONS AGAINST IDENTITY THEFT AND TO PROTECT THE CREDIT OF CRIME VICTIMS DURING THE PENDENCY OF CRIME VICTIMS COMPENSATION FUND APPLICATIONS AND APPEALS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-63 reads as rewritten:

"**§ 75-63. Security freeze.**

(a) A consumer may place a security freeze on the consumer's credit report by making a request ~~in writing by certified mail~~ to a consumer reporting agency in accordance with this subsection. 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.~~report, provided that the consumer reporting agency does not state or otherwise imply to the third party that the consumer's security freeze reflects a negative credit score, history, report, or rating. A consumer reporting agency shall place a security freeze on a consumer's credit report if the consumer requests a security freeze by any of the following methods:

(1) First-class mail.

(2) Telephone call.

(3) Secure Web site or secure electronic mail connection.

(a1) A nationwide consumer reporting agency, as defined in Section (603)(p) [15 U.S.C. § 1681a(p)] of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., that receives a request from a consumer residing in this State to place a security freeze on the consumer's file, shall provide a notice communicating to the consumer that the freeze is placed only with the consumer reporting agency to which the consumer directed the request. The notice shall provide to the consumer the website, postal address, and telephone number of the other nationwide consumer reporting agencies and of the North Carolina Attorney General's Office, and shall inform the consumer that he or she may use this information to contact other nationwide consumer reporting agencies to make security freeze requests and obtain

information on combating identity theft. No part of the notice to the consumer shall be used to make a solicitation for other goods and services.

(b) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than ~~five~~ three business days after receiving a written request from the ~~consumer.~~consumer by mail. A consumer reporting agency that receives such a request electronically or by telephone shall comply with the request within 24 hours of receiving the request.

(c) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within ~~10~~ three 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.~~time, or to a specific party, or for permanently lifting the freeze.

(d) If the consumer wishes to allow the consumer's credit report to be accessed for a specific period of time or by a specific party while a freeze is in place, the consumer shall contact the consumer reporting ~~agency,~~agency by mail, phone, or electronically, request that the freeze be ~~temporarily lifted,~~ lifted or lifted with respect to a specific party, 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 third party who is authorized to receive the consumer credit report or 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 by mail 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. A consumer reporting agency that receives such a request electronically or by telephone shall comply with the request within 15 minutes of receiving the request.

(g) A consumer reporting agency shall ~~remove or temporarily lift~~remove, temporarily lift, or lift with respect to a specific third party, a freeze placed on a consumer's credit report only in the following cases:

(1) Upon the consumer's request, pursuant to subsections (d) or (j) of this section.

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subdivision, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(g1) A consumer reporting agency need not meet the time requirements provided in this section, only for such time as the occurrences prevent compliance, if any of the following occurrences apply:

(1) The consumer fails to meet the requirements of subsections (d) or (j) of this section.

(2) The consumer reporting agency's ability to remove the security freeze is prevented by any of the following:

a. An act of God, including fire, earthquakes, hurricanes, storms, or similar natural disaster or phenomena.
b. Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrence.
c. Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruption.
d. Governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives.
e. Regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer reporting agency's systems.
f. Commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled.
g. Receipt of a removal request outside of normal business hours.

(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 or to a specific third party while the security freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be temporarily lifted for a specific period of time or to a specific third party or removed. A consumer reporting agency shall remove a security freeze within ~~three business days~~ 15 minutes of receiving a request for removal from the consumer, who provides all of the following:

(1) Proper identification.
(2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c) of this section.

(k) A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(l) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

(1) A person, or the person's subsidiary, affiliate, agent, subcontractor, or assignee with whom the consumer has, or prior to assignment had, an account, contract, or debtor-creditor relationship for the purposes of reviewing the active account or collecting the financial obligation owing for the account, contract, or debt.
(2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection (d) of this section for purposes of facilitating the extension of credit or other permissible use.
(3) Any person acting pursuant to a court order, warrant, or subpoena.
(4) A state or local agency, or its agents or assigns, which administers a program for establishing and enforcing child support obligations.
(5) A state or local agency, or its agents or assigns, acting to investigate fraud, including Medicaid fraud, or acting to investigate or collect delinquent taxes or assessments, including interest and penalties, unpaid court orders, or to fulfill any of its other statutory responsibilities.

(6) A federal, state, or local governmental entity, including law enforcement agency, court, or their agent or assigns.

(7) A person for the purposes of prescreening as defined by the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.

(8) Any person for the sole purpose of providing for a credit file monitoring subscription service to which the consumer has subscribed.

(9) A consumer reporting agency for the purpose of providing a consumer with a copy of the consumer's credit report upon the consumer's request.

(10) Any depository financial institution for checking, savings, and investment accounts.

(11) Any property and casualty insurance company for use in setting or adjusting a rate, adjusting a claim, or underwriting for property and casualty insurance purposes.

(12) A person for the purpose of furnishing or using credit reports for employment purposes pursuant to 15 U.S.C. § 1681b(b) or tenant screening pursuant to 15 U.S.C. § 1681b(a)(3)(F).

(13) A person for the purpose of criminal background record information.

(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,~~A consumer reporting agency shall not charge a fee to put a security freeze in place, remove a freeze, or lift a freeze pursuant to subsections (d) or (j) of this section, provided that any such request is made electronically. If a request to put a security freeze in place is made by

telephone or by mail, a consumer reporting agency may charge a fee to a consumer not to exceed three dollars ($3.00), except that a consumer reporting agency may not charge any fee to a consumer over the age of 62, 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.~~person, or to the victim's spouse. A consumer reporting agency shall not charge an additional fee to a consumer who requests to temporarily lift for a specific period of time or to a specific third party, reinstate, or remove a security freeze. A consumer reporting agency shall not charge a consumer for a onetime reissue of a replacement personal identification number. A consumer reporting agency may charge a fee not to exceed three dollars ($3.00) to provide any subsequent replacement personal identification number.

(o1) A parent or guardian of a minor residing in this State may, upon appropriate proof of identity and proof of their relationship to the minor, inquire of a nationwide consumer reporting agency, as defined in Section (603)(p) [15 U.S.C. § 1681a(p)] of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, as to the existence of a credit report for the minor of the parent or guardian. If a credit report for the minor exists, the nationwide consumer reporting agency shall make reasonable efforts to prevent providing a credit report on the minor until the minor reaches the age of majority. If a credit report for the minor does not exist, the nationwide consumer reporting agency has no obligation to create one.

(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~~can be requested in writing by ~~certified mail.~~first-class mail, by telephone, or electronically. You may also request a freeze by visiting the following Web site: [URL] or calling the following telephone number: [NUMBER].

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~~three business ~~days.~~days if you request it by mail, or within 24 hours if you request it by telephone or electronically. When you place a security freeze on your credit report, within ~~10~~three business days, you will be ~~provided~~sent a personal identification number or a password to use when you want to remove ~~or lift temporarily the security freeze.~~the security freeze, temporarily lift it, or lift it with respect to a particular third party.

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~~freeze, temporarily lift a freeze, or lift a freeze with respect to a particular third party 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.~~report, or the third party with respect to which you want to lift the freeze.

A consumer reporting agency that receives a request from you to temporarily lift a freeze or to lift a freeze with respect to a particular third party on a credit report shall comply with the request no later than three business days after receiving the ~~request.~~request by mail and no later than 15 minutes after receiving a request by telephone or electronically. A consumer reporting agency may charge you up to ~~ten dollars ($10.00)~~three dollars ($3.00) ~~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.~~to institute a freeze if your request is made by telephone or by mail. A consumer reporting agency may not charge you any amount to freeze, remove a freeze, temporarily lift a freeze, or lift a freeze with respect to a particular third party, if any of the following are true:

(1) Your request is made electronically.

(2) You are over the age of 62.

(3) You are the victim of identity theft and have submitted a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of your identifying information by another person, or you are the spouse of such a 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."

SECTION 2. G.S. 75-65 reads as rewritten:

"**§ 75-65. Protection from security breaches.**

(a) Any business that owns or licenses personal information of residents of North Carolina or any business that conducts business in North Carolina that owns or licenses personal information in any form (whether computerized, paper, or otherwise) shall provide notice to the affected person that there has been a security breach following discovery or notification of the breach. The disclosure notification shall be made without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (c) of this section, and consistent with any measures necessary to determine sufficient contact information, determine the scope of the breach and restore the reasonable integrity, security, and confidentiality of the data system. For the purposes of this section, personal information shall not include electronic identification numbers, electronic mail names or addresses, Internet account numbers, Internet identification names, parent's legal surname prior to marriage, or a password unless this information would permit access to a person's financial account or resources.

(b) Any business that maintains or possesses records or data containing personal information of residents of North Carolina that the business does not own or license, or any business that conducts business in North Carolina that maintains or possesses records or data containing personal information that the business does not own or license shall notify the owner or licensee of the information of any security breach immediately following discovery of the

breach, consistent with the legitimate needs of law enforcement as provided in subsection (c) of this section.

(c) The notice required by this section shall be delayed if a law enforcement agency informs the business that notification may impede a criminal investigation or jeopardize national or homeland security, provided that such request is made in writing or the business documents such request contemporaneously in writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. The notice required by this section shall be provided without unreasonable delay after the law enforcement agency communicates to the business its determination that notice will no longer impede the investigation or jeopardize national or homeland security.

(d) The notice shall be clear and conspicuous. The notice shall include ~~a description~~all of the following:

(1) ~~The~~ A description of the incident in general terms.

(2) ~~The~~ A description of the type of personal information that was subject to the unauthorized access and acquisition.

(3) ~~The~~ A description of the general acts of the business to protect the personal information from further unauthorized access.

(4) A telephone number for the business that the person may call for further information and assistance, if one exists.

(5) Advice that directs the person to remain vigilant by reviewing account statements and monitoring free credit reports.

(6) The toll-free numbers and addresses for the major consumer reporting agencies.

(7) The toll-free numbers, addresses, and Web site addresses for the Federal Trade Commission and the North Carolina Attorney General's Office, along with a statement that the individual can obtain information from these sources about preventing identity theft.

(e) For purposes of this section, notice to affected persons may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, for those persons for whom it has a valid e-mail address and who have agreed to receive communications electronically if the notice provided is consistent with the provisions regarding electronic records and signatures for notices legally required to be in writing set forth in 15 U.S.C. § 7001.

(3) Telephonic notice provided that contact is made directly with the affected persons.

(4) Substitute notice, if the business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000) or that the affected class of subject persons to be notified exceeds 500,000, or if the business does not have sufficient contact information or consent to satisfy subdivisions (1), (2), or (3) of this subsection, for only those affected persons without sufficient contact information or consent, or if the business is unable to identify particular affected persons, for only those unidentifiable affected persons. Substitute notice shall consist of all the following:

a. E-mail notice when the business has an electronic mail address for the subject persons.

b. Conspicuous posting of the notice on the Web site page of the business, if one is maintained.

c. Notification to major statewide media.

(e1) In the event a business provides notice to an affected person pursuant to this section, the business shall notify without unreasonable delay the Consumer Protection Division of the Attorney General's Office of the nature of the breach, the number of consumers affected by the breach, steps taken to investigate the breach, steps taken to prevent a similar breach in the future, and information regarding the timing, distribution, and content of the notice.

(f) In the event a business provides notice to more than 1,000 persons at one time pursuant to this section, the business shall notify, without unreasonable delay, the Consumer Protection Division of the Attorney General's Office and all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. § 1681a(p), of the timing, distribution, and content of the notice.

(g) Any waiver of the provisions of this Article is contrary to public policy and is void and unenforceable.

(h) A financial institution that is subject to and in compliance with the Federal Interagency Guidance Response Programs for Unauthorized Access to Consumer Information and Customer Notice, issued on March 7, 2005, by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, and any revisions, additions, or substitutions relating to said interagency guidance, shall be deemed to be in compliance with this section.

(i) A violation of this section is a violation of G.S. 75-1.1. No private right of action may be brought by an individual for a violation of this section unless such individual is injured as a result of the violation.

(j) Causes of action arising under this Article may not be assigned."

SECTION 3. G.S. 132-1.10 is amended by adding a new subsection to read:

"(f1) Without a request made pursuant to subsection (f) of this section, a register of deeds or clerk of court may remove from an image or copy of an official record placed on a register of deeds' or clerk of court's Internet Web site available to the general public, or placed on an Internet Web site available to the general public used by a register of deeds or clerk of court to display public records, a person's social security or drivers license number contained in that official record. Registers of deeds and clerks of court may apply optical character recognition technology or other reasonably available technology to official records placed on Internet Web sites available to the general public in order to, in good faith, identify and redact social security and drivers license numbers."

SECTION 4. The Conference of Clerks of Superior Court shall, in consultation with the registers of deeds, annually study the status of the individual counties and judicial districts as to whether or not the clerks of superior court or the registers of deeds are implementing this act and report results of the study to the Joint Legislative Commission on Governmental Operations on or before March 1st of each year.

SECTION 5. G.S. 15B-2 reads as rewritten:

"**§ 15B-2. Definitions.**

As used in this Article, the following definitions apply, unless the context requires otherwise:

(1) ~~"Allowable expense" means reasonable~~ Allowable expense. – Reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, medically-related property, and other remedial treatment and care.

Allowable expense includes a total charge not in excess of five thousand dollars ($5,000) for expenses related to funeral, cremation, and burial, including transportation of a body, but excluding expenses for flowers, gravestone, and other items not directly related to the funeral service.

Allowable expense for medical care, counseling, rehabilitation, medically-related property, and other remedial treatment and care of a victim shall be limited to sixty-six and two-thirds percent (66 2/3%) of the amount usually charged by the provider for the treatment or care. By accepting the compensation paid as allowable expense pursuant to this subdivision, the provider agrees that the compensation is payment in full for the treatment or care and shall not charge or otherwise hold a claimant financially responsible for the cost of services in addition to the amount of allowable expense.

(2) ~~"Claimant" means any~~Claimant. – Any of the following persons who claims an award of compensation under this Article:

a. A victim;
b. A dependent of a deceased victim;
c. A third person who is not a collateral source and who provided benefit to the victim or his family other than in the course or scope of his employment, business, or profession;
d. A person who is authorized to act on behalf of a victim, a dependent, or a third person described in subdivision c.

The claimant, however, may not be the offender or an accomplice of the offender who committed the criminally injurious conduct.

(3) ~~"Collateral source" means a~~ Collateral source. – A source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received or that is readily available to the victim or the claimant from any of the following sources:

a. The offender.
b. The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states.
c. Social Security, Medicare, or Medicaid.
d. State-required, temporary, nonoccupational disability insurance.
e. Worker's compensation.
f. Wage continuation programs of any employer.
g. Proceeds of a contract of insurance payable to the victim for loss that the victim sustained because of the criminally injurious conduct.
h. A contract providing prepaid hospital and other health care services, or benefits for disability.
i. A contract of insurance that will pay for expenses directly related to a funeral, cremation, and burial, including transportation of a body.

(4) ~~"Commission" means the~~Commission. – The Crime Victims Compensation Commission established by G.S. 15B-3.

(4a) Consumer reporting agency. – As defined in G.S. 75-61(4).

(4b) Credit report. – As defined in G.S. 75-61(3).

(5) ~~"Criminally injurious conduct" means conduct~~ Criminally injurious conduct. – Conduct that by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this State. Criminally injurious conduct includes conduct that amounts to an offense involving impaired driving as defined in G.S. 20-4.01(24a), and conduct that amounts to a violation of G.S. 20-166 if the victim was a pedestrian or was operating a vehicle moved solely by human power or a mobility impairment device.

For purposes of this Article, a mobility impairment device is a device that is designed for and intended to be used as a means of transportation for a person with a mobility impairment, is suitable for use both inside and outside a building, and whose maximum speed does not exceed 12 miles per hour when the device is being operated by a person with a mobility impairment. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle when the conduct is punishable only as a violation of other provisions of Chapter 20 of the General Statutes. Criminally injurious conduct shall also include an act of terrorism, as defined in 18 U.S.C. § 2331, that is committed outside of the United States against a citizen of this State.

(6) ~~"Dependent" means an~~Dependent. – An individual wholly or substantially dependent upon the victim for care and support and includes a child of the victim born after his death.

(7) ~~"Dependent's economic loss" means loss~~Dependent's economic loss. – Loss after a victim's death of contributions of things of economic value to his dependents, not including services they would have received from the victim if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death.

(8) ~~"Dependent's replacement service loss" means loss~~Dependent's replacement service loss. – Loss reasonably incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death and not subtracted in calculating dependent's economic loss.

Dependent's replacement service loss will be limited to a 26-week period commencing from the date of the injury and compensation shall not exceed two hundred dollars ($200.00) per week.

(9) ~~"Director" means the~~Director. – The Director of the Commission appointed under G.S. 15B-3(g).

(10) ~~"Economic loss" means economic~~Economic loss. – Economic detriment consisting only of allowable expense, work loss, replacement services loss, and household support loss. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement service loss. Noneconomic detriment is not economic loss, but economic loss may be caused by pain and suffering or physical impairment.

(10a) ~~"Household support loss" means the~~Household support loss. – The loss of support that a victim would have received from the victim's spouse for the purpose of maintaining a home or residence for the victim and the victim's dependents. A victim may be compensated fifty dollars ($50.00) per week for each dependent child. Compensation for household support loss shall not exceed three hundred dollars ($300.00) per week and shall be limited to 26 weeks commencing from the date of the injury. A victim may receive only one compensation for household support loss. Household support loss is only available to an unemployed victim whose spouse is the offender who committed the criminally injurious conduct that is the basis of the victim's claim under this act.

(11) ~~"Noneconomic detriment" means pain,~~ Noneconomic detriment. – Pain, suffering, inconvenience, physical impairment, or other nonpecuniary damage.

(12) ~~"Replacement services loss" means expenses~~Replacement services loss. – Expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

Replacement service loss will be limited to a 26-week period commencing from the date of the injury, and compensation may not exceed two hundred dollars ($200.00) per week.

(12a) ~~"Substantial evidence" means relevant~~Substantial evidence. – Relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

(13) ~~"Victim" means a~~Victim. – A person who suffers personal injury or death proximately caused by criminally injurious conduct.

(14) ~~"Work loss" means loss~~Work loss. – Loss of income from work that the injured person would have performed if he had not been injured and expenses reasonably incurred by him to obtain services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed by him, or by income he would have earned in available appropriate substitute work that he was capable of performing but unreasonably failed to undertake.

Compensation for work loss will be limited to 26 weeks commencing from the date of the injury, and compensation shall not exceed three hundred dollars ($300.00) per week. A claim for work loss will be paid only upon proof that the injured person was gainfully employed at the time of the criminally injurious conduct and, by physician's certificate, that the injured person was unable to work."

SECTION 6. Chapter 15B of the General Statutes is amended by adding a new section to read:

"**§ 15B-26. Crime victims credit protection.**

(a) A creditor that is owed money for services provided to a victim as a result of the criminally injurious conduct inflicted on the victim shall not communicate any information about the debt to a consumer reporting agency during the pendency of an application for an award filed pursuant to G.S. 15B-7 or during the pendency of an appeal from a decision related to such an application.

(b) The victim bears the burden of notifying the creditor that the debt is subject to subsection (a) of this section.

(c) A creditor may request monthly verification from the Commission that the application or appeal is still pending, and the Commission shall provide this verification."

SECTION 7. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 6.

"Credit Monitoring Services Act.

"**§ 75-123. Title.**

This Article shall be known and may be cited as the 'Credit Monitoring Services Act.'

"**§ 75-124. Definitions.**

The following definitions apply in this Article:

(1) Credit monitoring service. – Any person who offers, for a fee or compensation, to obtain, provide, or monitor a credit report on behalf of a consumer, or to assist a consumer in obtaining or monitoring the consumer's credit report, and provides or purports to provide the foregoing services. The term also includes any person who offers, for a fee or compensation, to

obtain or provide a fraud alert on behalf of a consumer or to assist a consumer in obtaining such fraud alert.

(2) Consumer report. – As defined in G.S. 75-61(3).

(3) Consumer. – An individual.

(4) Fraud alert. – As defined in the federal Fair Credit Reporting Act, 15 U.S.C. § 1681c-1.

(5) Person. – Any individual, partnership, corporation, association, business establishment, or any other legal or commercial entity.

"**§ 75-125. Required disclosure.**

(a) Prior to charging or collecting any fee or compensation from a consumer for obtaining, providing, or monitoring the consumer's credit report on behalf of the consumer, a credit monitoring service shall provide a clear and conspicuous written description of a consumer's right to free credit reports under the federal Fair Credit Reporting Act, and how to obtain those credit reports from each of the nationwide consumer reporting agencies, as defined in Section (603)(p) [15 U.S.C. § 1681a(p)] of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq.

(b) A violation of this section is a violation of G.S. 75-1.1."

SECTION 8. This act becomes effective October 1, 2009.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 1017 A BILL TO BE ENTITLED AN ACT TO ENHANCE PROTECTIONS AGAINST IDENTITY THEFT AND TO PROTECT THE CREDIT OF CRIME VICTIMS DURING THE PENDENCY OF CRIME VICTIMS COMPENSATION FUND APPLICATIONS AND APPEALS.

☒ With a favorable report as to the House committee substitute bill, unfavorable as to Senate Committee Substitute Bill and recommendation that the House committee substitute bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

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

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 851*

Short Title:	Supervision of Certain Defendants.	(Public)
Sponsors:	Senator Vaughan.	
Referred to:	Judiciary II.	

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW DISTRICT COURTS TO SUPERVISE DEFENDANTS CONVICTED IN SUPERIOR COURT WHO ARE ASSIGNED TO DRUG TREATMENT COURTS OR PROBLEM-SOLVING COURTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-271 is amended by adding a new subsection to read:

"(f) The superior court has exclusive jurisdiction over all hearings to revoke probation pursuant to G.S. 15A-1345(e) in which the district court is supervising a drug treatment court or a problem-solving criminal court probation judgment under G.S. 7A-272(e)."

SECTION 2. G.S. 7A-272 is amended by adding two new subsections to read:

"(e) With the consent of the chief district court judge and the senior resident superior court judge, the district court has jurisdiction to preside over the supervision of probation judgments entered in superior court in which the defendant is required to participate in a drug treatment court program pursuant to G.S. 15A-1343(b1)(2b) or a problem-solving criminal court, as defined in subsection (f) of this section, or is participating in the drug treatment court pursuant to a deferred prosecution agreement under G.S. 15A-1341(a2). The district court may modify or extend the probation judgment, but jurisdiction to revoke probation supervised under this subsection is as provided in G.S. 7A-271(f).

(f) As used in subsection (e) of this section, the term "problem-solving criminal court" refers to a court program, other than a drug treatment court established pursuant to Article 62 of Chapter 7A of the General Statutes, in which a criminal defendant, either as a condition of probation or pursuant to a deferred prosecution agreement under G.S. 15A-1341, is ordered to participate in specified activities designed to address underlying problems, such as substance abuse or mental illness, that contribute to the person's criminal activity. The ordered activities shall, at a minimum, require the person to participate in treatment and attend regular court sessions of the treatment court over an extended period of time. The senior resident superior court judge and the chief district court judge shall agree in writing that the problem-solving criminal court is being established before jurisdiction established by subsection (f) may be exercised by the district court."

SECTION 3. G.S. 15A-1344(a) reads as rewritten:

"(a) Authority to Alter or Revoke. – Except as provided in subsection (a1) or (b), probation may be reduced, terminated, continued, extended, modified, or revoked by any judge entitled to sit in the court which imposed probation and who is resident or presiding in the district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, where the sentence of probation was imposed, where the probationer violates probation, or where the probationer resides. Upon a finding that an offender sentenced to community punishment under Article 81B has violated one or more



conditions of probation, the court's authority to modify the probation judgment includes the authority to require the offender to comply with conditions of probation that would otherwise make the sentence an intermediate punishment. The district attorney of the prosecutorial district as defined in G.S. 7A-60 in which probation was imposed must be given reasonable notice of any hearing to affect probation substantially."

SECTION 4. G.S. 15A-1344 is amended by adding a new subsection to read:

"(a1) Authority to Supervise Probation in Drug Treatment Court or Problem-Solving Criminal Court. – Jurisdiction to supervise and modify probation imposed in cases in which the offender is required to participate in a drug treatment court or a problem-solving criminal court is as provided in G.S. 7A-272(e) and (f) and G.S. 7A-271(f). Proceedings to modify or revoke probation in such cases shall be held in the county in which the drug treatment court or problem-solving court is located."

SECTION 5. This act becomes effective October 1, 2009, and applies to probation judgments entered or deferred prosecution agreements executed on or after that date.

SENATE BILL 851:
Supervision of Certain Defendants

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	June 30, 2009
Introduced by:	Sen. Vaughan	**Prepared by:**	Susan Sitze*
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 851 would authorize a district court to supervise the probation of a defendant who is convicted in superior court and required to participate in a drug treatment court program or a problem-solving criminal court program or who is participating in a drug treatment court program pursuant to a deferred prosecution agreement.***

[As introduced, this bill was identical to H1076, as introduced by Reps. Wiley, Jones, Harrison, which is currently in Rules and Operations of the Senate.]

CURRENT LAW:

Under current law, the district court has jurisdiction over the trial of misdemeanor criminal actions. With the consent of the presiding district court judge, the prosecutor, and the defendant, the district court also has jurisdiction to accept a defendant's plea of guilty or no contest to a Class H or I felony under certain circumstances. Generally, the superior court has jurisdiction over all criminal actions not assigned to the district court. The superior court also jurisdiction over appeals from the district court.

BILL ANALYSIS:

Senate Bill 851 would provide that, with the consent of the chief district court judge and the senior resident superior court judge, the district court would supervise the probation of a defendant who is convicted in superior court and required to participate in a drug treatment court program or a problem-solving criminal court program or who is participating in a drug treatment court program pursuant to a deferred prosecution agreement. The district court would be authorized to modify or extend probation, but the authority to revoke probation would remain with the superior court.

Under Senate Bill 851, a "problem-solving criminal court" is a court program, other than a drug treatment court program, in which a criminal defendant must participate in specified activities designed to address underlying problems that contribute to the person's criminal behavior as a condition of the defendant's probation or deferred prosecution.

EFFECTIVE DATE:

Senate Bill 851 would become effective October 1, 2009, and apply to probation judgments entered or deferred prosecution agreements executed on or after that date.

**Jeff Hudson, Staff Attorney, contributed substantially to this summary.*

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

SB 851 A BILL TO BE ENTITLED AN ACT TO ALLOW DISTRICT COURTS TO SUPERVISE DEFENDANTS CONVICTED IN SUPERIOR COURT WHO ARE ASSIGNED TO DRUG TREATMENT COURTS OR PROBLEM-SOLVING COURTS.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

_____

SENATE BILL 853

Short Title:	Motion for Appropriate Relief/New Requirement.	(Public)
Sponsors:	Senator Vaughan.	
Referred to:	Judiciary II.	

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN ATTORNEY MAKING A MOTION FOR APPROPRIATE RELIEF, WHETHER BY ORAL OR WRITTEN MOTION, MUST CERTIFY IN WRITING TO THE COURT THAT THE ATTORNEY HAS REVIEWED THE TRIAL TRANSCRIPT AND HAS NOTIFIED AND CONSULTED WITH OR HAS MADE A GOOD FAITH EFFORT TO NOTIFY AND CONSULT WITH BOTH THE ATTORNEY WHO INITIALLY PROSECUTED THE CASE AND THE DEFENSE ATTORNEY WHO INITIALLY REPRESENTED THE DEFENDANT OF THE MOTION AND TO REQUIRE THAT THE CERTIFICATION APPEAR IN WRITING ON THE MOTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1420(a) reads as rewritten:

"(a) Form, Service, Filing.

(1) A motion for appropriate relief must:

a. Be made in writing unless it is made:

1. In open court;
2. Before the judge who presided at trial;
3. Before the end of the session if made in superior court; and
4. Within 10 days after entry of judgment;

b. State the grounds for the motion;

c. Set forth the relief sought;~~ and~~

c1. Certify in writing that the attorney making the motion has reviewed the trial transcript and has notified and consulted with or has made a good faith effort to notify and consult with both the attorney who initially prosecuted the case and the defense attorney who initially represented the defendant in the case, if the defendant was represented by counsel, of the motion; and

d. Be timely filed.

(2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When the written motion is made more than 10 days after entry of judgment, service of the motion and a notice of hearing must be made not less than five working days prior to the date of the hearing. When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must provide for the giving of adequate notice of the

motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.

(3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).

(4) An oral or written motion for appropriate relief may not be granted in district court without the signature of the district attorney, indicating that the State has had an opportunity to consent or object to the motion. However, the court may grant a motion for appropriate relief without the district attorney's signature 10 business days after the district attorney has been notified in open court of the motion, or served with the motion pursuant to G.S. 15A-951(c).

(5) An oral or written motion for appropriate relief may not be granted by the court without written certification by the attorney making the motion that the attorney has reviewed the trial transcript and has notified and consulted with or has made a good faith effort to notify and consult with both the attorney who initially prosecuted the case and the defense attorney who initially represented the defendant in the case, if the defendant was represented by counsel, of the motion. The written certification required by this subdivision shall appear on the motion."

SECTION 2. This act becomes effective December 1, 2009, and applies to all motions for appropriate relief made on or after that date.

SENATE BILL 853:
Motion for Appropriate Relief/New Requirement

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	June 30, 2009
Introduced by:	Sen. Vaughan	**Prepared by:**	Susan Sitze* Committee Counsel
Analysis of:	PCS to First Edition S853-CSSA-56		

SUMMARY: ***Senate Bill 853 would require that an attorney making a motion for appropriate relief must certify in writing to the court that the attorney has: (i) reviewed the trial transcript, and (ii) consulted with or made a good faith effort to notify the attorney who originally prosecuted the case and the attorney who initially represented the defendant of the motion.***

CURRENT LAW: Article 89 of Chapter 15A of the General Statutes governs motions for appropriate relief, and provides for a single, unified procedure for raising at the trial level errors which are asserted to have been made during the trial. Relief available upon grant of a motion for appropriate relief includes:

- A new trial on all or any of the charges.
- Dismissal of all or any of the charges.
- Pursuant to relief sought by the State, (1) the imposition of sentence when prayer for judgment has been continued and grounds for the imposition of sentence are asserted; or (2) the initiation of any proceeding authorized under Article 82 (Probation), Article 83 (Imprisonment), and Article 84 (Fines), with regard to the modification of sentences.
- For claims of factual innocence, referral to the Innocence Inquiry Commission.
- Any other appropriate relief.

BILL ANALYSIS: The bill would require that an attorney making a motion for appropriate relief must certify in writing to the court that:

- There is a sound legal basis for the motion & that it is being made in good faith.
- The attorney has notified both the district attorneys' office and the attorney who initially represented the defendant of the motion.
- The attorney has reviewed the trial transcript, or made a good faith determination that the nature of the relief sought in the motion does not require that the trial transcript be read in its entirety.

EFFECTIVE DATE: The bill would become effective December 1, 2009, and apply to all motions for appropriate relief made on or after that date.

**Jennifer McGinnis, Staff Attorney, contributed substantially to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 853
PROPOSED HOUSE COMMITTEE SUBSTITUTE S853-CSSA-56 [v.1]

6/24/2009 5:06:55 PM

Short Title: Motion for Appropriate Relief/New Requirement. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN ATTORNEY MAKING A MOTION FOR APPROPRIATE RELIEF, WHETHER BY ORAL OR WRITTEN MOTION, MUST CERTIFY IN WRITING TO THE COURT THAT THE MOTION IS MADE IN GOOD FAITH AND ON SOUND LEGAL BASIS, THAT THE ATTORNEY HAS REVIEWED THE TRIAL TRANSCRIPT AS APPROPRIATE, OR IF THE TRANSCRIPT IS UNAVAILABLE, STATE THE EFFORTS UNDERTAKEN TO LOCATE THE TRANSCRIPT, HAS NOTIFIED BOTH THE DISTRICT ATTORNEY AND THE DEFENSE ATTORNEY WHO INITIALLY REPRESENTED THE DEFENDANT OF THE MOTION AND TO REQUIRE THAT THE CERTIFICATION APPEAR IN WRITING ON THE MOTION.

THE GENERAL ASSEMBLY OF NORTH CAROLINA ENACTS:

SECTION 1. G.S. 15A-1420(a) reads as rewritten:

"(a) Form, Service, Filing.

(1) A motion for appropriate relief must:

a. Be made in writing unless it is made:

1. In open court;
2. Before the judge who presided at trial;
3. Before the end of the session if made in superior court; and
4. Within 10 days after entry of judgment;

b. State the grounds for the motion;

c. Set forth the relief sought; ~~and~~

c1. If the motion for appropriate relief is being made by an attorney, the attorney must certify in writing that there is a sound legal basis for the motion, and that it is being made in good faith; and that the attorney has notified both the district attorneys' office and the attorney who initially represented the defendant of the motion; and further, that the attorney has reviewed the trial transcript or made a good faith determination that the nature of the relief sought in the motion does not require that the trial transcript be read in its entirety. In the event that the trial transcript is unavailable, instead of certifying that the attorney has read the trial transcript, the attorney shall set forth in writing what efforts were undertaken to locate the transcript; and

d. Be timely filed.

(2) A written motion for appropriate relief must be served in the manner provided in G.S. 15A-951(b). When the written motion is made more than 10 days after entry of judgment, service of the motion and a notice of hearing must be made not less than five working days prior to the date of the hearing. When a motion for appropriate relief is permitted to be made orally the court must determine whether the matter may be heard immediately or at a later time. If the opposing party, or his counsel if he is represented, is not present, the court must provide for the giving of adequate notice of the motion and the date of hearing to the opposing party, or his counsel if he is represented by counsel.

(3) A written motion for appropriate relief must be filed in the manner provided in G.S. 15A-951(c).

(4) An oral or written motion for appropriate relief may not be granted in district court without the signature of the district attorney, indicating that the State has had an opportunity to consent or object to the motion. However, the court may grant a motion for appropriate relief without the district attorney's signature 10 business days after the district attorney has been notified in open court of the motion, or served with the motion pursuant to G.S. 15A-951(c).

(5) An oral or written motion for appropriate relief made by an attorney may not be granted by the court unless the attorney has complied with the requirements of sub-subdivision (1)c1. of this subsection."

SECTION 2. This act becomes effective December 1, 2009, and applies to all motions for appropriate relief made on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

SB 853 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT AN ATTORNEY MAKING A MOTION FOR APPROPRIATE RELIEF, WHETHER BY ORAL OR WRITTEN MOTION, MUST CERTIFY IN WRITING TO THE COURT THAT THE ATTORNEY HAS REVIEWED THE TRIAL TRANSCRIPT AND HAS NOTIFIED AND CONSULTED WITH OR HAS MADE A GOOD FAITH EFFORT TO NOTIFY AND CONSULT WITH BOTH THE ATTORNEY WHO INITIALLY PROSECUTED THE CASE AND THE DEFENSE ATTORNEY WHO INITIALLY REPRESENTED THE DEFENDANT OF THE MOTION AND TO REQUIRE THAT THE CERTIFICATION APPEAR IN WRITING ON THE MOTION.

☒ With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the House committee substitute bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

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

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 1077
Judiciary II Committee Substitute Adopted 5/7/09

Short Title: Expand Parole Officers' Delegated Authority. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE AUTHORITY DELEGATED TO PROBATION OFFICERS IN ORDER TO MAKE INTERMEDIATE SANCTIONS AVAILABLE FOR AN OFFENDER SENTENCED TO COMMUNITY PUNISHMENT IF THE RISK ASSESSMENT JUSTIFIES THOSE SANCTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1343.2(e) reads as rewritten:

"(e) Delegation to Probation Officer in Community Punishment. – Unless the presiding judge specifically finds in the judgment of the court that delegation is not appropriate, the Division of Community Corrections in the Department of Correction may require an offender sentenced to community punishment to:

(1) Perform up to 20 hours of community service, and pay the fee prescribed by law for this supervision;

(2) Report to the offender's probation officer on a frequency to be determined by the officer; or

(3) Submit to substance abuse assessment, monitoring or ~~treatment.~~treatment, or to any of the conditions listed in G.S. 15A-1340.11(6).

If the Division imposes any of the above requirements, then it may subsequently reduce or remove those same requirements.

If the probation officer exercises authority delegated by the court pursuant to this subsection, the offender may file a motion with the court to review the action taken by the probation officer. The offender shall be given notice of the right to seek such a court review. The Division may exercise any authority delegated to it under this subsection only if it first determines that the offender has failed to comply with one or more of the conditions of probation imposed by the court."

SECTION 2. G.S. 15A-1340.11(2) reads as rewritten:

"(2) Community punishment. – A sentence in a criminal case that does not include an active punishment, an intermediate punishment, or any of the conditions of probation listed in subdivision (6) of this ~~section.~~ section, except to the extent that the court has delegated authority to a probation officer to include those conditions pursuant to G.S. 15A-1343.2(e)."

SECTION 3. This act becomes effective December 1, 2009.

SENATE BILL 1077:
Expand Parole Officers' Delegated Authority

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	June 30, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Tim Hovis*
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 1077 would amend the law concerning offenders sentenced to community punishment to allow the Division of Community Corrections in the Department of Correction to require offenders who fail to comply with one or more of the conditions of probation imposed by the court to submit to conditions of probation that would normally be incident to intermediate punishment.***

CURRENT LAW: Special probation rules for persons sentenced under structured sentencing are set out in G.S. 15A-1343.2. The Division of Community Corrections in the Department of Correction may require an offender sentenced to community punishment to perform up to 20 hours of community service and pay the fee for supervision, to report to the offender's probation officer as required, and to submit to substance abuse assessment, monitoring or treatment.

BILL ANALYSIS: **Section 1** of the bill would amend the law concerning offenders sentenced to community punishment to allow the Division of Community Corrections in the Department of Correction to require offenders who fail to comply with one or more of the conditions of probation imposed by the court to submit to special probation, assignment to a residential program, house arrest with electronic monitoring, intensive probation, or assignment to a day reporting center or a drug treatment court program. **Section 2** of the bill would amend the definition of "community punishment" to allow for imposing conditions of probation that would normally be incident to intermediate punishment, when the offender has failed to comply with one or more of the conditions of probation imposed by the court.

EFFECTIVE DATE: The bill would become effective December 1, 2009.

*This summary was substantially contributed to by Brenda Carter, Staff Attorney.

S1077-SMRG-80(e2) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 1077 A BILL TO BE ENTITLED AN ACT TO EXPAND THE AUTHORITY DELEGATED TO PROBATION OFFICERS IN ORDER TO MAKE INTERMEDIATE SANCTIONS AVAILABLE FOR AN OFFENDER SENTENCED TO COMMUNITY PUNISHMENT IF THE RISK ASSESSMENT JUSTIFIES THOSE SANCTIONS.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

SENATE BILL 929
Judiciary II Committee Substitute Adopted 5/11/09

Short Title: No Set Aside of Bond Forfeit/Actual Notice. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO: (1) AMEND REQUIREMENTS APPLICABLE TO AND CLARIFY SANCTIONS THAT MAY BE IMPOSED IN CONJUNCTION WITH MOTIONS TO SET ASIDE FORFEITURES; AND (2) PROVIDE THAT A COURT MAY REFUSE TO SET ASIDE A BOND FORFEITURE ONLY IF, BEFORE EXECUTING THE BOND, THE SURETY OR BAIL AGENT HAD ACTUAL NOTICE OF A DEFENDANT'S FAILURE TO APPEAR ON TWO OR MORE PRIOR OCCASIONS IN THE CASE FOR WHICH THE BOND WAS EXECUTED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-544.5(d) reads as rewritten:

"(d) Motion Procedure. – If a forfeiture is not set aside under subsection (c) of this section, the only procedure for setting it aside is as follows:

...

(4) If neither the district attorney nor the board of education has filed a written objection to the motion by the ~~tenth~~ twentieth day after the motion is served, the clerk shall enter an order setting aside the forfeiture.

...

(8) If at the hearing the court determines that the motion to set aside was not signed or that the documentation required to be attached pursuant to subdivision (1) of this subsection is fraudulent or was not attached to the motion at the time the motion was filed, the court may order monetary sanctions against the surety filing the motion, unless the court also finds that the failure to sign the motion or attach the required documentation was unintentional. A motion for sanctions and notice of the hearing thereof shall be served on the surety not later than 10 days before the time specified for the hearing. If the court concludes that a sanction should be ordered, in addition to ordering the denial of the motion to set aside, sanctions shall be imposed as follows: (i) twenty-five percent (25%) of the bond amount for failure to sign the motion; (ii) fifty percent (50%) of the bond amount for failure to attach the required documentation; and (iii) not less than one hundred percent (100%) of the bond amount for the filing of fraudulent documentation. This subdivision shall not limit the criminal prosecution of any individual involved in the creation or filing of any fraudulent documentation."

SECTION 2. G.S. 15A-544.5(f) reads as rewritten:

"(f) ~~No More Than Two Forfeitures May Be~~ Set Aside Prohibited in Certain Circumstances. ~~Per Case.~~ No forfeiture of a bond may be set aside for any reason ~~In~~ in any

case in which ~~the State proves that~~ the surety or the bail agent had actual notice ~~or actual knowledge,~~ before executing a bail ~~bond,~~ bond that the defendant had already failed to appear on two or more prior occasions in the case for which the bond was executed. Actual notice as required by this subsection shall only occur if two or more failures to appear are indicated on the defendant's release order by a judicial official. The judicial official shall indicate on the release order when it is the defendant's second or subsequent failure to appear in the case for which the bond was executed.~~occasions, no forfeiture of that bond may be set aside for any reason.~~"

SECTION 3. Section 1 of this act becomes effective October 1, 2009, and applies to all motions to set aside filed on or after that date. Section 2 of this act becomes effective October 1, 2009, and applies to bail bonds executed on or after that date.

SENATE BILL 929:
No Set Aside of Bond Forfeit/Actual Notice

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	June 23, 2009
Introduced by:	Sen. Berger of Franklin	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to Second Edition S929-CSRV-55		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 929 would amend requirements applicable to motions to set aside bail bond forfeitures and clarify sanctions that may be imposed in conjunction with such motions. It would also provide that a court may not set aside a bond forfeiture if, before executing the bond, the surety or bail agent had actual notice of a defendant's failure to appear on two or more prior occasions in the case for which the bond was executed.***

CURRENT LAW: If a defendant released upon execution of bail fails to appear as required, the court must generally enter forfeiture for the amount of the bail bond in favor of the State against the defendant and each surety on the bond (GS 15A-44.3). However, forfeiture may be set aside in certain circumstances (death of the defendant, incarceration elsewhere, etc) if certain procedures are followed in accordance with the statute (GS 15A-44.3).

BILL ANALYSIS: The bill would amend the statute governing the process pertaining to a motion to set aside a forfeiture by:

Section 1:

- Changing the period of time during which the district attorney or county board of education may file a written objection to a motion to set aside from ten to twenty days.
- Providing that, in addition to failure to attach required documentation to a motion to set aside or attachment of fraudulent information, failure to sign a motion is grounds for sanctions and denial of the motion – unless failure to sign or attach the required documentation was unintentional. In addition, the bill: (i) provides that a motion for sanctions and notice of same must be provided to a surety not later than 10 days before a hearing; and (ii) specifies the amount of sanctions to be imposed for failure to sign a motion (25% of bond), failure to attach required documentation (50% of bond), and attachment of fraudulent documentation (not less than 100%). Sanctions awarded would be docketed by the clerk of superior court as a civil judgment.

Section 2: With regard to cases in which a defendant has failed to appear on two or more prior occasions, which would give rise to a prohibition on setting aside a forfeiture under existing law, the bill would amend the language to provide that a surety or bail agent must have *actual notice* (rather than "notice or actual knowledge" under current law) and specify that actual notice will only occur if the two prior failures to appear are indicated on the defendant's release order by a judicial official.

EFFECTIVE DATE: . Section 1 of the bill would become effective October 1, 2009, and apply to all motions to set aside filed on or after that date. Section 2 of the bill would become effective October 1, 2009, and apply to bail bonds executed on or after that date.

Jennifer McGinnis, counsel to Senate Judiciary II, substantially contributed to this summary.

S929-SMRV-106(CSRV-55) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 929
Judiciary II Committee Substitute Adopted 5/11/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S929-CSRV-55 [v.2]

6/24/2009 12:36:05 PM

Short Title: No Set Aside of Bond Forfeit/Actual Notice. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND REQUIREMENTS APPLICABLE TO MOTIONS TO SET ASIDE BAIL BOND FORFEITURES AND CLARIFY SANCTIONS THAT MAY BE IMPOSED IN CONJUNCTION WITH SUCH MOTIONS; AND TO PROVIDE THAT A COURT MAY NOT SET ASIDE A BAIL BOND FORFEITURE IF, BEFORE EXECUTING THE BOND, THE SURETY OR BAIL AGENT HAD ACTUAL NOTICE OF A DEFENDANT'S FAILURE TO APPEAR ON TWO OR MORE PRIOR OCCASIONS IN THE CASE FOR WHICH THE BOND WAS EXECUTED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-544.5(d) reads as rewritten:

"(d) Motion Procedure. – If a forfeiture is not set aside under subsection (c) of this section, the only procedure for setting it aside is as follows:

...

(4) If neither the district attorney nor the board of education has filed a written objection to the motion by the ~~tenth~~ twentieth day after the motion is served, the clerk shall enter an order setting aside the forfeiture.

...

(8) If at the hearing the court determines that the motion to set aside was not signed or that the documentation required to be attached pursuant to subdivision (1) of this subsection is fraudulent or was not attached to the motion at the time the motion was filed, the court may order monetary sanctions against the surety filing the motion, unless the court also finds that the failure to sign the motion or attach the required documentation was unintentional. A motion for sanctions and notice of the hearing thereof shall be served on the surety not later than 10 days before the time specified for the hearing. If the court concludes that a sanction should be ordered, in addition to ordering the denial of the motion to set aside, sanctions shall be imposed as follows: (i) twenty-five percent (25%) of the bond amount for failure to sign the motion; (ii) fifty percent (50%) of the bond amount for failure to attach the required documentation; and (iii) not less than one hundred percent (100%) of the bond amount for the filing of fraudulent documentation. Sanctions awarded under this subdivision shall be docketed by the clerk of superior court as a civil judgment as provided in G.S. 1-234.

This subdivision shall not limit the criminal prosecution of any individual involved in the creation or filing of any fraudulent documentation."

SECTION 2. G.S. 15A-544.5(f) reads as rewritten:

"(f) ~~No More Than Two Forfeitures May Be~~ Set Aside Prohibited in Certain Circumstances. ~~Per Case.~~ No forfeiture of a bond may be set aside for any reason ~~In~~ in any case in which ~~the State proves that~~ the surety or the bail agent had actual notice ~~or actual knowledge,~~ before executing a bail ~~bond,~~ bond that the defendant had already failed to appear on two or more prior occasions in the case for which the bond was executed. Actual notice as required by this subsection shall only occur if two or more failures to appear are indicated on the defendant's release order by a judicial official. The judicial official shall indicate on the release order when it is the defendant's second or subsequent failure to appear in the case for which the bond was executed.~~occasions, no forfeiture of that bond may be set aside for any reason.~~"

SECTION 3. Section 1 of this act becomes effective October 1, 2009, and applies to all motions to set aside filed on or after that date. Section 2 of this act becomes effective October 1, 2009, and applies to bail bonds executed on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 929 A BILL TO BE ENTITLED AN ACT TO: (1) AMEND REQUIREMENTS APPLICABLE TO AND CLARIFY SANCTIONS THAT MAY BE IMPOSED IN CONJUNCTION WITH MOTIONS TO SET ASIDE FORFEITURES; AND (2) PROVIDE THAT A COURT MAY REFUSE TO SET ASIDE A BOND FORFEITURE ONLY IF, BEFORE EXECUTING THE BOND, THE SURETY OR BAIL AGENT HAD ACTUAL NOTICE OF A DEFENDANT'S FAILURE TO APPEAR ON TWO OR MORE PRIOR OCCASIONS IN THE CASE FOR WHICH THE BOND WAS EXECUTED.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill and recommendation that the House committee substitute bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

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

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

_____ The bill/resolution is re-referred to the Committee on _____.

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, July 15, 2009

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, July 15, 2009, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Angela Bryant, Jim Gulley, Mark Hilton, Sarah Stevens and Joe Tolson. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Seitz. House Sergeant-at-Arms assisting: Marvin Lee, Bob Rossi, John Brandon and Rod Finger. House Pages: Madison Parker from Johnston County sponsored by Representative Langdon, Kayla Hollingsworth from Randolph County sponsored by Representative Hurly, Caylin Bullock from Wake County from Wake County sponsored by Speaker Hackney, Jake Toompas from Forsyth County sponsored by Representative Stam and Logan Brawley from Forsyth County sponsored by Representative McGee. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. The following bills were placed before the Committee:

Senate Bill 293-A BILL TO BE ENTITLED: an act to amend the qualifications for prospective jurors and to authorize the register of deeds to store an electronic copy of the juror master list. The Chair called upon the bill sponsor Rep. Glazier to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Coates was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 3*)

Senate Bill 1062- A BILL TO BE ENTITLED: an act strengthening domestic violence protective orders to provide for the protection of pets. The Chair called upon the bill sponsor Rep. Boseman to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Stevens was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 4*)

Senate Bill 372-A BILL TO BE ENTITLED: an act to clarify types of nuisances wherein obscene or lewd matter or other conduct prohibited is involved and to

provide that individuals engaged in a pattern of street gang activity are subject to injunctions pursuant to Chapter 19 of the General Statutes. The Chair called upon the bill sponsor Rep. Boseman to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Do to the multiple inquiries about this bill Chairman Faison felt the need to place this bill in a sub-committee. Chairman appointed Rep. Hilton to chair, as well as Rep. Stevens and Alexander to serve on the committee. The Bill and Bill Analysis is attached. (Attachment 5)

SENATE BILL 713-A BILL TO BE ENTITLED: an act to create the criminal offense of removing, destroying, or circumventing the operation of an electronic monitoring device. The Chair called upon the bill sponsor Rep. Rucho to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Stevens was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 6*)

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 2:28 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, July 15, 2009
1:00 PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **Senate Bills**

1.	SB 293	Juror Qualifications/Electronic Juror List.	Senator Clodfelter
2.	SB 1062	Strengthen Dom. Vio. Protective Orders/Pets.	Senator Boseman
3.	SB 372	Clarification of Nuisance Abatement Laws.	Senator Boseman
4.	SB 713	Removal of Electronic Monitoring Device.	Senator Rucho

4. **Adjourn**

VISITOR REGISTRATION SHEET

Ways & Means — 7-15-09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Alicia Dow	MWC
Dena DeCamillis	UNC-100
Jessie Croom	NCCADV
Beth Froehling	NCCADV
Hannah Rowland	NC DOL-DCC
Ashley Beall	American Cancer Society
Kim Hibbard	NCLM
Betsy McCorkle	CCNC
Dan Crawford	CCNC
Chris Hollis	K&C Gates
Vernetta Cockerham	NCCADV/WDC
Teri Hairston	NCCADV

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 293
Judiciary I Committee Substitute Adopted 4/1/09

Short Title: Juror Qualifications/Electronic Juror List: (Public)

Sponsors:

Referred to:

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE QUALIFICATIONS FOR PROSPECTIVE JURORS AND TO AUTHORIZE THE REGISTER OF DEEDS TO STORE AN ELECTRONIC COPY OF THE JUROR MASTER LIST.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 9-3 reads as rewritten:

"**§ 9-3. Qualifications of prospective jurors.**

All persons are qualified to serve as jurors and to be included on the jury list who are citizens of the State and residents of the county, who have not served as jurors during the preceding two years, who are 18 years of age or over, who are physically and mentally competent, who can ~~hear and~~ understand the English language, who have not been convicted of a felony or pleaded guilty or nolo contendere to an indictment charging a felony (or if convicted of a felony or having pleaded guilty or nolo contendere to an indictment charging a felony have had their citizenship restored pursuant to law), and who have not been adjudged non compos mentis. Persons not qualified under this section are subject to challenge for cause."

SECTION 1.(b) G.S. 8B-2 is amended by adding a new subsection to read:

"(c1) When a deaf person is selected as a juror in any proceeding in any superior or district court of the State or as a grand juror, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person. A deaf juror shall be entitled to have the appointed qualified interpreter be present during all jury proceedings and deliberations in order to interpret for the deaf person. The appointed qualified interpreter shall be subject to the same duties, confidentiality, and other restrictions as imposed by the judge on the member of the jury."

SECTION 2. G.S. 9-4 reads as rewritten:

"**§ 9-4. Preparation and custody of list.**

As the jury list is prepared, the name and address of each qualified person selected for the list shall be written on a separate card. The cards shall then be alphabetized and permanently numbered, the numbers running consecutively with a different number on each card. These cards shall constitute the jury list for the county. They shall be filed with the register of deeds of the county, together with a statement of the sources used and procedures followed in preparing the list. The list shall be kept under lock and key, but shall be available for public inspection during regular office hours. The register of deeds may elect to store an electronic copy of the jury list for the county."

SECTION 3. Section 1 of this act becomes effective October 1, 2009, and the remainder of this act is effective when it becomes law.

SENATE BILL 293:
Juror Qualifications/Electronic Juror List

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	July 15, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Tim Hovis*
Analysis of:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 293 would do the following:

- ***Remove the qualification of hearing for potential jurors.***
- ***Require a deaf interpreter if a hearing impaired juror is selected.***
- ***Permit Registers of Deeds to maintain an electronic copy of the juror list.***

SECTIONS 1.(a), (b)– JUROR QUALIFICATION OF HEARING

CURRENT LAW & BILL ANALYSIS: The jury commission in each county is responsible for preparing a list of prospective jurors. To be included in that list are all persons qualified to serve as jurors: persons who are citizens of the State and residents of that county, have not served as a juror in the past 2 years, who are 18 or older, who are physically and mentally competent, who can **hear and understand English**, who have not been convicted of a felony or pleaded guilty or nolo contender to a felony indictment, and who has not been adjudged non compos mentis (not of sound mind, memory, or understanding). Anyone failing to meet all of the above stated qualifications is subject to challenge for cause.

Sections 1.(a) would eliminate the qualification of hearing for potential jurors. Section 1.(b) makes conforming changes to the interpreters for the deaf statutes. The conforming changes would:

- Require a judge of the district or superior court to appoint a deaf interpreter if a hearing impaired juror is selected. The interpreter would be paid a reasonable fee for services. G.S. 8B-8(a).
- Specifically state that the appointed qualified interpreter would be allowed in the jury proceedings and deliberations, and be subject to the duties and confidentiality of jurors.

SECTION 2. – JUROR LIST

CURRENT LAW & BILL ANALYSIS: The Register of Deeds in each county is mandated to provide public access to the juror list once prepared. The list is to be maintained under lock and key, but available for public inspection during regular office hours. The list is a separate card for each juror, in alphabetical order by name.

Section 2 would allow the Register of Deeds to maintain that potential juror list in an electronic format.

EFFECTIVE DATE: Section 1 of the bill becomes effective October 1, 2009. The remainder of the bill becomes effective when it becomes law.

S293-SMRG-90(e2) v1

**This summary was substantially contributed to by Erika Churchill and Drupti Chauhan, Staff Attorneys.*

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 293 A BILL TO BE ENTITLED AN ACT TO AMEND THE QUALIFICATIONS FOR PROSPECTIVE JURORS AND TO AUTHORIZE THE REGISTER OF DEEDS TO STORE AN ELECTRONIC COPY OF THE JUROR MASTER LIST.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 3

SENATE BILL 1062*
Judiciary II Committee Substitute Adopted 5/6/09
Judiciary II Committee Substitute #2 Adopted 5/12/09

Short Title: Strengthen Dom. Vio. Protective Orders/Pets. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT STRENGTHENING DOMESTIC VIOLENCE PROTECTIVE ORDERS TO PROVIDE FOR THE PROTECTION OF PETS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-3(a) reads as rewritten:

"(a) If the court, including magistrates as authorized under G.S. 50B-2(c1), finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence. A protective order may include any of the following types of relief:

(1) Direct a party to refrain from such acts.

(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.~~parties, including the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

(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.

b1. Cruelly treating or abusing an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

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.

(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child."

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

SENATE BILL 1062:
Strengthen Dom. Vio. Protective Orders/Pets

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	July 15, 2009
Introduced by:	Sen. Boseman	**Prepared by:**	Susan Sitze*
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***Senate Bill 1062 would provide that a domestic violence protective order may include provisions to ensure the proper care and treatment of pets owned by the parties subject to the order.***

CURRENT LAW: Under current law, if a court finds that an act of domestic violence has occurred, the court may grant a protective order restraining the defendant from further acts of domestic violence. The protective order may include certain types of relief, as provided in the statute.

BILL ANALYSIS: Under Senate Bill 1062, a domestic violence protection order could also:

- Provide for the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.
- Direct a party to refrain from the cruel treatment or abuse of an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

EFFECTIVE DATE: This act would become effective when it becomes law.

S1062-SMSA-124(e3) v1

**Jeff Hudson, Staff Attorney, contributed substantially to this summary.*

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 1062 A BILL TO BE ENTITLED AN ACT STRENGTHENING DOMESTIC VIOLENCE PROTECTIVE ORDERS TO PROVIDE FOR THE PROTECTION OF PETS.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 372
Judiciary II Committee Substitute Adopted 5/12/09

Short Title: Clarification of Nuisance Abatement Laws. (Public)

Sponsors:

Referred to:

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY TYPES OF NUISANCES WHEREIN OBSCENE OR LEWD MATTER OR OTHER CONDUCT PROHIBITED IS INVOLVED AND TO PROVIDE THAT INDIVIDUALS ENGAGED IN A PATTERN OF STREET GANG ACTIVITY ARE SUBJECT TO INJUNCTIONS PURSUANT TO CHAPTER 19 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 19-1(a) reads as rewritten:

"**§ 19-1. What are nuisances under this Chapter.**

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of regular and repeated acts of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance."

SECTION 1.1. G.S. 19-1.2 reads as rewritten:

"**§ 19-1.2. Types of nuisances.**

The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:

(1) Any and every place in the State where lewd films are publicly exhibited as a predominant ~~and regular~~ course of business, or possessed for the purpose of such ~~exhibition;~~exhibition.

(2) Any and every place in the State where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such ~~exhibition;~~exhibition.

(3) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a nuisance under this ~~Article;~~Article.

(4) Any and every place of business in the State in which lewd publications constitute a principal or substantial part of the stock in ~~trade;~~trade.

(5) Any and every lewd publication possessed at a place which is a nuisance under this ~~Article;~~Article.

(6) Every place ~~which, as a regular course of business,~~ which is used for the regular and repeated purposes of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of

alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur. Knowledge of, acquiescence to, or participation in the regular and repeated activities proscribed by this Chapter by any person charged with maintaining a nuisance shall be prima facie evidence that the person used the place for the purposes of such activities."

SECTION 2. G.S. 19-1.1(1a) reads as rewritten:

"**§ 19-1.1. Definitions.**

As used in this Chapter relating to illegal possession or sale of obscene matter or to the other conduct prohibited in G.S. 19-1(a), the following definitions shall apply:

...

(1a) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness. With regard to nuisances involving assignation, prostitution, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the ~~peace,~~peace, or repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses, or evidence that the defendant knew or by the exercise of due diligence should have known of the acts or conduct constitutes proof of knowledge."

SECTION 3. G.S. 19-1.3 reads as rewritten:

"**§ 19-1.3. Personal property as a nuisance; knowledge of nuisance.**

The following are also declared to be nuisances, as personal property used in conducting and maintaining a nuisance under this Chapter:

(1) All moneys paid as admission price to the exhibition of any lewd film found to be a ~~nuisance;~~nuisance.

(2) All valuable consideration received for the sale of any lewd publication which is found to be a ~~nuisance;~~nuisance.

(3) All money or other valuable consideration, vehicles, conveyances, or other property received or used in gambling, prostitution, the illegal sale of alcoholic ~~beverages or~~beverages, the illegal sale of substances proscribed under the North Carolina Controlled Substances ~~Act,~~Act, or the operation of a sexually oriented business in violation of G.S. 19-1(b1).~~as well as the furniture and movable contents of a place used in connection with such prohibited conduct.~~

(4) The furniture and movable contents of a place used in connection with conduct prohibited by G.S. 19-1(a), (b), or (b1).

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in G.S. 19-2.4 upon the place, or its manager, or acting manager, or person then in charge, all such parties are deemed to have knowledge of the contents of the restraining order and the use of the place occurring thereafter. Where the circumstantial proof warrants a determination that a person had knowledge of the nuisance prior to such service of process, the court may make such finding."

SECTION 4. G.S. 19-2.1 reads as rewritten:

"**§ 19-2.1. Action for abatement; injunction.**

Wherever a nuisance is kept, maintained, or exists, as defined in this Article, the Attorney General, district attorney, county, municipality, or any private citizen of the county may maintain a civil action in the name of the State of North Carolina to abate a nuisance under this Chapter, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of

any structure or thing adjudged to be a nuisance under this Chapter; provided, however, that no private citizen may maintain such action where the alleged nuisance involves the illegal possession or sale of obscene or lewd matter.

Upon request from the Attorney General, district attorney, county or municipality, including the sheriff or chief of police of any county or municipality, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety or any other law enforcement agency with jurisdiction may investigate alleged public nuisances and make recommendations regarding actions to abate the public nuisances.

If an action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a temporary restraining order or a ~~temporary~~ preliminary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than one thousand dollars ($1,000), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the temporary restraining order or preliminary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting attorney, the Attorney General, county, or municipality, and no action shall be maintained against any public official or public entity, their employees, or agents for investigating or maintaining an action for abatement of a nuisance under the provisions of this Chapter."

SECTION 5. G.S. 19-2.3 reads as rewritten:

"**§ 19-2.3. Temporary order restraining removal of personal property from premises; service; punishment.**

Where such application for a preliminary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte temporary restraining order in accordance with G.S. 1A-1, Rule 65(b), preserving the status quo and restraining the defendant and all other persons from removing or in any manner interfering with any evidence specifically described, or in any manner removing or interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court granting or refusing such preliminary injunction and until further order of the court thereon. Nothing herein shall be interpreted to allow the prior restraint of the distribution of any matter or the sale of the stock in trade, but an inventory and full accounting of all business transactions involving alleged obscene or lewd matter thereafter shall be required. The inventory provisions provided by this section shall not apply to nuisances occurring at a private dwelling place unless the court finds the private dwelling place is used for profit.

Any person, firm, or corporation enjoined pursuant to this section may file with the court a motion to dissolve any temporary restraining order. Such a motion shall be heard within 24 hours of the time a copy of the motion is served on the complaining party, or on the next day the superior courts are open in the district, whichever is later. At such hearing the complaining party shall have the burden of showing why the restraining order should be continued.

In the event a temporary restraining order is issued, it may be served in accordance with the provisions of G.S. 1A-1, Rule 4, or may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by such service under said ~~Rule 4, delivery and posting.~~ Rule 4. The officer serving such temporary restraining order shall forthwith enter upon the property and make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such temporary restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof, while the same remains in force, is a contempt of court, provided such posted order contains therein a notice to that effect."

SECTION 6. G.S. 19-3(a) reads as rewritten:

"(a) The action provided for in this Chapter ~~shall~~ shall, on application of either of the parties, be set down for trial at the first term of the court and shall have precedence over all other cases except crimes, election contests, or injunctions."

SECTION 7. G.S. 19-6 reads as rewritten:

"**§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.**

Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney's fees and court costs.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages or substances proscribed under the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the ~~peace,~~ peace, or repeated acts or omissions that violate a local ordinance regulating sexually oriented businesses, or such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner.

The clear proceeds of civil penalties and forfeitures provided for in this section, except for penalties and properties that accrue to local governments instead of the State, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 8. G.S. 19-6.1 reads as rewritten:

"**§ 19-6.1. Forfeiture of real property.**

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the manufacture, possession with intent to sell, or sale of controlled substances as defined by the North Carolina Controlled Substances Act, two prior occurrences of the possession of any controlled substance included within Schedule I or II of that Act, or two prior convictions within five years of violation of G.S. 14-72.7, the real

property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section. In the case of the two prior convictions of G.S. 14-72.7, the convictions shall not arise out of the same transaction or occurrence.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

(1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) prior to the action had written notice from the plaintiff, or any governmental agent or entity authorized to bring an action pursuant to this Chapter, that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;

(2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued, begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of ~~narcotic drugs~~controlled substances and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the sale. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title

under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners."

SECTION 9. G.S. 14-50.24 is repealed.

SECTION 10. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 13B.

"North Carolina Street Gang Nuisance Abatement Act.

"**§ 14-50.31. Short title.**

This Article shall be known and may be cited as the "North Carolina Street Gang Nuisance Abatement Act."

"**§ 14-50.32. Real property used by criminal street gangs declared a public nuisance; abatement.**

(a) Public Nuisance. – Any real property that is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal street gang activity, as defined in G.S. 14-50.16, shall constitute a public nuisance and may be abated as provided by Article 1 of Chapter 19 of the General Statutes.

(b) Innocent Activities. – The provisions of this section shall not apply to real property used for criminal street gang activity where the owner or person who has legal possession of the real property does not have actual knowledge that the real property is being used for criminal street gang activity.

"**§ 14-50.33. Street gangs declared a public nuisance.**

(a) A street gang, as defined in G.S. 14-50.16(b), which regularly associates in street gang activities, as defined in G.S. 14-50.16(c), constitutes a public nuisance. For the purposes of this section, "regularly" means at least five times in a period not more than 12 months.

(b) Any person who regularly associates with others to engage in street gang activity, as defined in G.S. 14-50.16, may be made a defendant in a suit, brought pursuant to Chapter 19 of the General Statutes, to abate any public nuisance resulting from street gang activity.

(c) If the court finds that a public nuisance exists under this section, the court may enter an order enjoining the defendant in the suit from engaging in gang activities and impose other reasonable requirements to prevent the defendant or a gang from engaging in future gang activities."

SECTION 11. This act becomes effective October 1, 2009, and applies to offenses committed and abatement actions commenced on or after that date.

SENATE BILL 372:
Clarification of Nuisance Abatement Laws

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	July 14, 2009
Introduced by:	Sen. Boseman	**Prepared by:**	Tim Hovis* Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***Senate Bill 372 makes changes to the nuisance abatement laws to clarify that a place need not be operated solely for the purpose of carrying on nuisance activity in order to be considered a nuisance. The Proposed Committee Substitute also makes a street gang that regularly engages in street gang activity a public nuisance. Individuals who regularly associate with others to engage in street gang activity may be enjoined from engaging in street gang activities.***

CURRENT LAW: Article 1 of Chapter 19 of the General Statutes deals with the abatement of nuisances. It provides a civil process by which individuals who control real property may be enjoined from maintaining that property and allowing certain illegal activities occur. The Article covers buildings used for the purpose of: assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances, illegal possession or sale of obscene or lewd matter, repeated acts that constitute a breach of the peace, repeated activities or conditions that violate a local ordinance regulating sexually oriented business, or maintaining a "chop shop".

G.S. 14-50.24 provides real property used by and criminal street gang for the purpose of conducting criminal street gang activity may be declared a public nuisance and enjoined. The following definitions apply:

- "criminal street gang" or "street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, that:
  - (1) Has as one of its primary activities the commission of one or more felony offenses, or delinquent acts that would be felonies if committed by an adult;
  - (2) Has three or more members individually or collectively engaged in, or who have engaged in, criminal street gang activity; and
  - (3) May have a common name, common identifying sign or symbol.
- "criminal street gang activity" means to commit, to attempt to commit, or to solicit, coerce, or intimidate another person to commit an act or acts, with the specific intent that such act or acts were intended or committed for the purpose, or in furtherance, of the person's involvement in a criminal street gang or street gang. An act or acts are included if accompanied by the necessary mens rea or criminal intent and would be chargeable by indictment under the following laws of this State:
  - (1) Any offense under Article 5 of Chapter 90 of the General Statutes (Controlled Substances Act).
  - (2) Any offense under Chapter 14 of the General Statutes except Articles 9, 22A, 40, 46, 47, 59 thereof; and further excepting G.S. 14-78.1, 14-82, 14-86, 14-145, 14-179, 14-183, 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-247, 14-248, 14-313 thereof.
- "pattern of criminal street gang activity" means engaging in, and having a conviction for, at least two prior incidents of criminal street gang activity, that have the same or similar purposes,

results, accomplices, victims, or methods of commission or otherwise are interrelated by common characteristics and are not isolated and unrelated incidents, provided that at least one of these offenses occurred after December 1, 2008, and the last of the offenses occurred within three years, excluding any periods of imprisonment, of prior criminal street gang activity. Any offenses committed by a defendant prior to indictment for an offense based upon a pattern of street gang activity shall not be used as the basis for any subsequent indictments for offenses involving a pattern of street gang activity.

BILL ANALYSIS:

Sections 1 and 1.1 modify language in G.S. 19-1(a)[1] and 19-1.2(6)[2] that is used to determine whether a particular illegal activity constitutes a nuisance. In the case of Salisbury v. Campbell, 169 N.C. App. 829 (2005), the court held that a plaintiff must show that a defendant leased or used the property for the purpose of the illegal activity. As a means of showing the defendant's purpose in leasing or operating the building, the plaintiff may present evidence that the illegal activity occurred regularly. The defendant may then offer evidence of a lawful business purpose in order to negate the inference that illegal activity was the "sole purpose" of the leasing or using the property. The result of this holding seems to be that if the defendant can show evidence of any legal use, a court could not find a nuisance, regardless of how often or frequently illegal acts occur. The 2nd edition of the bill amends G.S. 19-1(a) and 19-1.2(6) to provide that the repeated and regular use of property for illegal purposes constitutes a nuisance. It also provides knowledge, acquiescence or participation in the regular and repeated activities is prima facie evidence that the person used the property for those purposes.

Section 2 makes the statute consistent by including all nuisances defined in §19-1.

Section 3 amends existing language to clarify that a sexually oriented business is a "for profit" nuisance, the proceeds of which are subject to forfeiture. The proceeds of all "for profit" nuisances are subject to forfeiture, as provided in §19-6. The Section also separates "contents" from "proceeds" and clarifies that the contents of any nuisance, whether "for profit" or not, are declared a nuisance and are subject to a lien and available to satisfy the costs of abatement, as already provided in § 19-1(c) and §19-6.

Section 4 corrects the terminology used in the statute to conform to the North Carolina Rules of Civil Procedure.

Section 5 deletes unnecessary language.

Section 6 conforms the statute to the way these cases are usually scheduled for trial (like any other civil action), while leaving open the option for any party to insist on an immediate trial.

---

[1] **"§ 19-1. What are nuisances under this Chapter.**

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place *for the purpose of* assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance." (Emphasis added.)

[2] **"§ 19-1.2. Types of nuisances.**

"The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:. . .

(6) Every place which, *as a regular course of business, is used for the purposes of* lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur." (Emphasis added.)

Section 7 makes the statute consistent by including all nuisances defined in §19-1.

Section 8 corrects certain language to make G.S. 19-6.1 consistent with the remainder of the Article.

Section 9 repeals the provisions in Chapter 14 related to the abatement of street gang activity as a nuisance.

Section 10 re-enacts the language from G.S. 14-50.24 in a new Article 13B. Individuals who regularly associate with others to engage in street gang activity may be enjoined from engaging in street gang activities.

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to offenses committed and abatement actions commenced on or after that date.

*This summary was substantially contributed to by Kory Goldsmith, Staff Attorney.

S372-SMRG-89(e2) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 3

SENATE BILL 713
Judiciary I Committee Substitute Adopted 5/7/09
House Committee Substitute Favorable 6/4/09

Short Title: Removal of Electronic Monitoring Device. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF REMOVING, DESTROYING, OR CIRCUMVENTING THE OPERATION OF AN ELECTRONIC MONITORING DEVICE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 30 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-226.3. Interference with electronic monitoring devices.**

(a) For purposes of this section, the term "electronic monitoring device" includes any electronic device that is used to track the location of a person.

(b) It is unlawful for any person to knowingly and without authority remove, destroy, or circumvent the operation of an electronic monitoring device that is being used for the purpose of monitoring a person who is:

(1) Complying with a house arrest program;

(2) Wearing an electronic monitoring device as a condition of bond or pretrial release;

(3) Wearing an electronic monitoring device as a condition of probation;

(4) Wearing an electronic monitoring device as a condition of parole; or

(5) Wearing an electronic monitoring device as a condition of post-release supervision.

(c) It is unlawful for any person to knowingly and without authority request or solicit any other person to remove, destroy, or circumvent the operation of an electronic monitoring device that is being used for the purposes described in subsection (b) of this section.

(d) This section does not apply to persons who are being monitored by an electronic monitoring device pursuant to the provisions of Chapter 7B of the General Statutes.

(e) Violation of this section by a person who is required to comply with electronic monitoring as a result of a conviction for a criminal offense is a felony one class lower than the most serious underlying felony or a misdemeanor one class lower than the most serious underlying misdemeanor, except that, if the most serious underlying felony is a Class I felony, then violation of this section is a Class A1 misdemeanor. Violation of this section by a person who is required to comply with electronic monitoring as a condition of bond or pretrial release is a Class 1 misdemeanor. Violation of this section by any other person is a Class 2 misdemeanor."

SECTION 2. This act becomes effective December 1, 2009, and applies to acts committed on or after that date.

SENATE BILL 713:
Removal of Electronic Monitoring Device

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	July 15, 2009
Introduced by:	Sen. Rucho	**Prepared by:**	Susan Sitze
Analysis of:	Third Edition		Committee Counsel

SUMMARY: Senate Bill 713 would make it unlawful to remove, destroy, or circumvent the operation of an electronic monitoring device, or to request or solicit any other person to remove, destroy, or circumvent the operation of an electronic monitoring device.

[As introduced, this bill was identical to H836, as introduced by Rep. Tillis, which is currently in Rules and Operations of the Senate.]

CURRENT LAW: There is no criminal offense that specifically prohibits tampering with an electronic monitoring device. However, for the person required to wear the device, it would be a violation of the conditions under which the person was released on bond, pretrial release, probation, parole, or post-release supervision.

BILL ANALYSIS: Senate Bill 713 would make it unlawful to knowingly and without authority remove, destroy, or circumvent the operation of an electronic monitoring device, or to request or solicit any other person to remove, destroy, or circumvent the operation of an electronic monitoring device that is being used to monitor a person who is:

- Complying with a home arrest program
- Wearing the device as a condition of bond or pretrial release
- Wearing the device as a condition of probation
- Wearing the device as a condition of parole
- Wearing the device as a condition of post-release supervision

This offense would not apply to a juvenile, being monitored by an electronic monitoring device by the juvenile court.

Violation by a person wearing the device as a result of a criminal conviction would be an offense one class lower than the most serious underlying offense for which the person was convicted and required to wear the device. Violation by a person wearing the device as a condition of bond or pretrial release would be a Class 1 misdemeanor. Violation by any other person would be a Class 2 misdemeanor.

EFFECTIVE DATE: The act would become effective December 1, 2009, and would apply to acts committed on or after that date.

S713-SMSA-123(e3) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 713 A BILL TO BE ENTITLED AN ACT TO CREATE THE CRIMINAL OFFENSE OF REMOVING, DESTROYING, OR CIRCUMVENTING THE OPERATION OF AN ELECTRONIC MONITORING DEVICE.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

_____ The bill/resolution is re-referred to the Committee on _____.

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, July 22, 2009

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, July 22, 2009, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates; Representatives Kelly Alexander, Angela Bryant, Jim Gulley, Mark Hilton, Sarah Stevens and Joe Tolson. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Seitz. House Sergeant-at-Arms assisting: Mark Cone, Victor Womack, and Martha Gadison. House Pages: Katherine Kennedy from Wake County sponsored by Representative Hurley, Sarah Henderson from Wake County sponsored by Representative England, Emily Williams from Edgecombe County sponsored by Representative Stewart, Lindsay Jordan from New Hanover County Sponsored by Representative Goforth, Sammy Hobgood from Orange County sponsored by Chairman Faison and Stephen Talley from Brunswick County sponsored by Representative Iler. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. The following bill was placed before the Committee:

House Bill 1433-A BILL TO BE ENTITLED: an act to clarify the immunity from liability of persons using automated external defibrillators in emergency situations. The Chair called upon the bill sponsor Rep. Bordsen to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized for a motion to concur. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 3*)

Senate Bill 884-A BILL TO BE ENTITLED: an act to amend the law related to renunciations and to make related amendments to the North Carolina uniform trust code and the law governing powers of attorney and administration of decedent's estates, as recommended by the general statutes commission. Chairman explained that this bill has been gutted and replace with the Hookah Bar bill. **A BILL TO BE ENTITLED: an act to provide that the term 'cigar bar' includes a 'hookah bar' for purposes of extending to hookah bars and no others the exemption of cigar bars from the smoking prohibitions of G.S. 130A-496(b)(2) and G.S. 130a-498(b1)(6) if the Hookah Bar meets the following five requirements and no others: (1) the hookah bar's primary business is to rent to patrons a hookah pipe that contains a specified amount of flavored tobacco for the purpose of smoking the hookah pipe on the premises, (2) forty percent of the hookah bar's quarterly gross revenue is generated from hookah pipe rentals and the sale of flavored tobacco, (3) the hookah bar**

prohibits individuals under the age of eighteen from entering the hookah bar premises and does not allow individuals under the age of twenty-one to enter the premises if it has a permit to sell alcoholic beverages, (4) the hookah bar prohibits the smoking of cigarettes and cigars on the hookah bar's premises, and (5) the hookah bar meets the applicable requirements of article 23 of chapter 130a of the general statutes pertaining to quarterly revenue reporting and verification and to structural and smoke migration requirements. Rep. Coates moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Sutton to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Coates was recognized to send forth an amendment. With a vote of four in favor and four in opposition the amendment dies. Rep. Bryant was recognized to send forth an amendment. With a vote of six in favor two in the negative. The amendment was adopted. Rep. Stevens was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS, Sponsor Handouts, Amendments and Committee Report are attached. (*Attachment 4*)

Senate Bill 140-A BILL TO BE ENTITLED: an act to amend the offense of domestic criminal trespass by making it a felony for a person who is the subject of a valid protective order to trespass on property where the protected party resides and that is operated as a safe house or haven for domestic violence victims without regard as to whether the person covered by the protective order is present on the premises and to provide that it is an aggravating circumstance for first degree murder if a defendant who is the subject of a valid protective order commits a murder on the premises of a shelter for victims of domestic violence where the protected party is residing. Rep. Alexander moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Sen. Snow to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 5*)

Senate Bill 372-A BILL TO BE ENTITLED: an act to clarify types of nuisances wherein obscene or lewd matter or other conduct prohibited is involved and to provide that individuals engaged in a pattern of street gang activity are subject to injunctions pursuant to Chapter 19 of the General Statutes. Rep. Bryant moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Sen. Boseman to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Do to time restraints this bill was not voted on.

With no further time for business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:49 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, July 22, 2009
1:00 PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **Senate Bills**

1.	SB 884	Renunciation Amendments.	Senator Hartsell
2.	SB 140	Amend Domestic Crim. Trespass.	Senator Snow
3.	HB 1433	Clarify Volunteer Immunity/AED.	Representative Engl Representative Bord
4.	SB 372	Clarification of Nuisance Abatement Laws.	Senator Boseman

4. **Adjourn**

VISITOR REGISTRATION SHEET

Ways & Means — 7/22/09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pam Seamans	NC Alliance for Health
Sally Herndon	NC DPH, TP+C Branch
Jennifer Emerson-Ray	American Heart Assoc.
Ann Staples	NC DPH, TP+C Branch
Lee Storrow	American Heart Ass.
Betsy Vetter	American Heart Assn
Ashley Bell	American Cancer Society
Chris Killian	Nelson Mullins
Colleen Kochanek	ICLG
Dena DeCamillis	UNC-IOG
Chris Fitzsimon	
Chris Hoke	DPH
Sapna Kalsy	DPH
David Bowy	MWC

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dan Crawford	CCNC
Anne Thornhill	NC Prevention Partners

VISITOR REGISTRATION SHEET

Ways & Means — 7/22/09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Allison Cooper	RRW Attorneys, P.A.
Randall Reavis	Nexsen Pruet
EDDIE CALDWELL	NC Sheriffs' Assn.
Jon Carr	American Cancer Society

VISITOR REGISTRATION SHEET

Ways & Means — 7/22/09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Ezzell	HWTF
R. Ray Hall	General Statutes Commission
Ardis Watkins	SENC
Conor McGrath	Koncepts Hookah LLC
Sylvia Tarleton	
Paula A. Holt	March of Dimes
[illegible]	NMRS
Carrie Lee	NMRS
Elizabeth Duncan	WCSR
Sandy Sands	WCSR
Cady Thomas	NC Assn of REALTORS
Kim Hibbard	NCLM

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 4

HOUSE BILL 1433

Committee Substitute Favorable 5/4/09
Senate Judiciary I Committee Substitute Adopted 7/13/09
Fourth Edition Engrossed 7/14/09

Short Title: Clarify Volunteer Immunity/AED. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE IMMUNITY FROM LIABILITY OF PERSONS USING AUTOMATED EXTERNAL DEFIBRILLATORS IN EMERGENCY SITUATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-21.14 reads as rewritten:

"**§ 90-21.14. First aid or emergency treatment; liability limitation.**

(a) Any person, including a volunteer medical or health care provider at a facility of a local health department as defined in G.S. 130A-2 or at a nonprofit community health center or a volunteer member of a rescue squad, who receives no compensation for his services as an emergency medical care provider, who renders first aid or emergency health care treatment to a person who is unconscious, ill or injured,

(1) When the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and

(2) When the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the person,

shall not be liable for damages for injuries alleged to have been sustained by the person or for damages for the death of the person alleged to have occurred by reason of an act or omission in the rendering of the treatment unless it is established that the injuries were or the death was caused by gross negligence, wanton conduct or intentional wrongdoing on the part of the person rendering the treatment. <u>The immunity conferred in this section also applies to any person who uses an automated external defibrillator (AED) and otherwise meets the requirements of this section.</u>

(a1) Recodified as § 90-21.16 by Session Laws 2001-230, s. 1(a).

(b) Nothing in this section shall be deemed or construed to relieve any person from liability for damages for injury or death caused by an act or omission on the part of such person while rendering health care services in the normal and ordinary course of his business or profession. Services provided by a volunteer health care provider who receives no compensation for his services and who renders first aid or emergency treatment to members of athletic teams are deemed not to be in the normal and ordinary course of the volunteer health care provider's business or profession.

(c) In the event of any conflict between the provisions of this section and those of G.S. 20-166(d), the provisions of G.S. 20-166(d) shall control and continue in full force and effect."

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

HOUSE BILL 1433:
Clarify Volunteer Immunity/AED

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	July 21, 2009
Introduced by:	Reps. England, Bordsen	**Prepared by:**	Tim Hovis* Committee Counsel
Analysis of:	Fourth Edition		

SUMMARY: House Bill 1433 clarifies the extension of immunity to a person who provides medical care in an emergency situation to include a person who uses an automated external defibrillator (AED).

This bill is being heard by the Committee for a recommendation to the House on concurrence.

CONCURRENCE: Senate changes to House Bill 1433 clarified that immunity for persons who use an AED applies to any person meeting the requirements of G.S. 90-21.14 (see CURRENT LAW below). The Senate deleted language granting the immunity to persons providing "medical care in an emergency situation, whether or not the person is trained in the use of an [AED] ...or has training in health care, so long as the person receives no compensation." Existing language in G.S. 90-21.14 grants immunity to "any person... who receives no compensation for his services as an emergency medical care provider."

CURRENT LAW: G.S. 90-21.14(a) provides that with regard to the rendering of first aid or emergency health care treatment certain individuals in specified situations shall not be liable for:

- damages for injuries alleged to have been sustained by the person, or for
- damages for the death of the person alleged to have occurred by reason of an act or omission

in the rendering of the treatment unless it is established that the injuries were or the death was caused by gross negligence, wanton conduct or intentional wrongdoing on the part of the person rendering the treatment. This limitation on liability applies to:

- any person,
- a volunteer medical or health care provider at a facility of a local health department as defined in G.S. 130A-2 or at a nonprofit community health center, or
- a volunteer member of a rescue squad, who receives no compensation for his services as an emergency medical care provider, who renders first aid or emergency health care treatment to a person who is unconscious, ill or injured,
  - (1) When the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and
  - (2) When the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the person.

BILL ANALYSIS: House Bill 1433 clarifies the immunity provided in the current law when rendering first aid or emergency treatment. The bill clarifies that the immunity granted in G.S. 90-21.14(a) applies to any person who uses an automated external defibrillator (AED) and otherwise meets the requirements of the section.

EFFECTIVE DATE: House Bill 1433 would become effective when it becomes law.

**Giles Perry, Susan Sitze, and Theresa Matula of the Research Division contributed substantially to this summary.*

H1433-SMRG-95(e4) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Senate Committee Substitute for

HB 1433 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE IMMUNITY FROM LIABILITY OF PERSONS USING AUTOMATED EXTERNAL DEFIBRILLATORS IN EMERGENCY SITUATIONS.

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 884*
Judiciary II Committee Substitute Adopted 5/11/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S884-PCS75279-LN-43

Short Title: Smoking Prohibition Exemption. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE TERM 'CIGAR BAR' INCLUDES A 'HOOKAH BAR' FOR PURPOSES OF EXTENDING TO HOOKAH BARS AND NO OTHERS THE EXEMPTION FOR CIGAR BARS FROM THE SMOKING PROHIBITIONS OF G.S. 130A-496(B)(2) AND G.S. 130A-498(B1)(6) IF THE HOOKAH BAR MEETS THE FOLLOWING FOUR REQUIREMENTS AND NO OTHERS: (1) THE HOOKAH BAR'S PRIMARY BUSINESS IS TO RENT TO PATRONS A HOOKAH PIPE THAT CONTAINS A SPECIFIED AMOUNT OF FLAVORED TOBACCO FOR THE PURPOSE OF SMOKING THE HOOKAH PIPE ON THE PREMISES, (2) FORTY PERCENT OF THE HOOKAH BAR'S QUARTERLY GROSS REVENUE IS GENERATED FROM HOOKAH PIPE RENTALS AND THE SALE OF FLAVORED TOBACCO, (3) THE HOOKAH BAR PROHIBITS INDIVIDUALS UNDER THE AGE OF EIGHTEEN FROM ENTERING THE HOOKAH BAR PREMISES, (4) THE HOOKAH BAR PROHIBITS THE SMOKING OF CIGARETTES AND CIGARS ON THE HOOKAH BAR'S PREMISES, AND (5) THE HOOKAH BAR MEETS THE APPLICABLE REQUIREMENTS OF ARTICLE 23 OF CHAPTER 130A OF THE GENERAL STATUTES PERTAINING TO QUARTERLY REVENUE REPORTING AND VERIFICATION AND TO STRUCTURAL AND SMOKE MIGRATION REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Effective January 2, 2010, G.S. 130A-492(1a) reads as rewritten:

"(1a) "Cigar bar". – An establishment with a permit to sell alcoholic beverages pursuant to subdivision (1), (3), (5), or (10) of G.S. 18B-1001 that satisfies all of the ~~following:~~following, except sub-subdivision d. of this subdivision:

a. Generates sixty percent (60%) or more of its quarterly gross revenue from the sale of alcoholic beverages and twenty-five percent (25%) or more of its quarterly gross revenue from the sale of cigars;

b. Has a humidor on the premises; and

c. Does not allow individuals under the age of 21 to enter the premises.

Revenue generated from other tobacco sales, including cigarette vending machines, shall not be used to determine whether an establishment satisfies the definition of cigar bar.



d. The term cigar bar includes a hookah bar for the purposes of exemptions from smoking prohibitions under G.S. 130A-496(b)(2) and G.S. 130A-498(b1)(6) if the hookah bar:

1. Is an establishment whose primary business is to rent to patrons a hookah pipe that contains a specified amount of flavored tobacco for the purpose of smoking the hookah pipe on the premises;
2. Generates forty percent (40%) or more of its quarterly gross revenue from hookah pipe rentals and the sale of flavored tobacco and complies with reporting and verification requirements pertaining to quarterly gross revenue;
3. Does not allow individuals under the age of 18 to enter the premises;
4. Prohibits the smoking of cigarettes and cigars on the hookah bar's premises; and
5. Complies with free-standing structure and smoke migration requirements of G.S. 130A-496(b)(2)."

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

SENATE BILL 884:
Renunciation Amendments

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary II	**Date:**	July 22, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	Brenda J. Carter
Analysis of:	PCS to Second Edition S884-CSLN-43		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 884 would expand the definition of 'cigar bar' to include a 'hookah bar', for purposes of the exemption for cigar bars from smoking prohibitions.***

CURRENT LAW: House Bill 2(SL 2009-27) provides for the regulation of smoking in enclosed areas of restaurants and bars and authorizes local government to adopt and enforce ordinances, board of health rules, and other laws or policies that are more restrictive than State law. Effective January 2, 2010, the act prohibits smoking in bars and restaurants, with the following exceptions:

- Areas within such establishments that are not considered enclosed areas.
- A designated smoking guest room in a lodging establishment (up to 20% of guest rooms).
- Private clubs
- A cigar bar, if smoke doesn't migrate into an enclosed nonsmoking area. Cigar bars that begin operation after July 1, 2009 must be freestanding structures.

A cigar bar is an establishment with a permit to sell alcoholic beverages, that generates 60% or more of its quarterly gross revenue from the sale of alcoholic beverages and 25% or more of its quarterly gross revenues from the sale of cigars, has a humidor on the premises, and does not allow individuals under the age of 21 to enter the premises.

BILL ANALYSIS: The proposed committee substitute for Senate Bill 884 would expand the definition of 'cigar bar' to include a 'hookah bar', for purposes of the exemption of cigar bars from newly enacted smoking prohibitions, if the hookah bar meets the following requirements:

- its primary business is to rent to patrons a hookah pipe that contains a specified amount of flavored tobacco for the purpose of smoking the hookah pipe on the premises
- at least 40% of its quarterly gross revenue is generated from hookah pipe rentals and the sale of flavored tobacco
- it prohibits individuals under the age of 18 from entering the premises
- it prohibits the smoking of cigarettes and cigars on the hookah bar's premises
- it meets the applicable requirements of Article 23 of Chapter 130A of the General Statutes pertaining to quarterly revenue reporting and verification and to structural and smoke migration requirements.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 884*

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

S884-ARV-17 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S884-PCS75279-LN-43

Date _____,2009

Representative Coates

moves to amend the bill on page 2, line 4 by inserting after the word "establishment" the phrase "in operation prior to July 1, 2009".

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 7/22/09

S. B. No. 884 Amendment No. _____

PCS 75277-LN-43 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.) Bryant
Sen.)

moves to amend the bill on page 2, line 12

( ) WHICH CHANGES THE TITLE

by deleting "18" and substituting "21".

rewriting that line to read:

"3. Does not allow individuals under the age of 18 to enter the premises. If the establishment has a permit to sell alcoholic beverages, the establishment shall not allow individuals under the age of 21 to enter the"

and to amend the title accordingly.

SIGNED Angela R. Bryant

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NC PREVENTION PARTNERS

Survey of Hookah Establishments in North Carolina

Prepared by NC Prevention Partners, July, 2009[i]

After the successful passage of a statewide law to prohibit smoking in all NC restaurants and bars, discussion of the law's impact on hookah bars was brought up by legislators and hookah establishment owners. This report provides a description of hookah, the health impact of hookah use, and results of a survey of hookah establishments in North Carolina.

What is hookah?

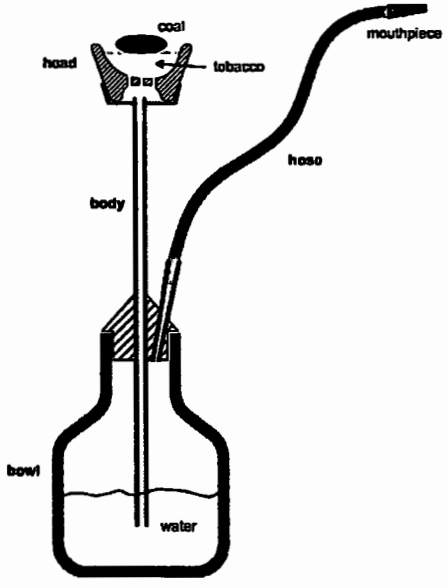


Figure 1: Diagram of a Hookah

Hookah is also called narghile (**nar**-guh-lee) smoking[ii]. The four main components of a hookah are the water bowl, body, head, and hose (see Figure 1: Diagram of a Hookah). At the bottom of the head are holes through which the smoke passes though the body of the hookah, and into the water bowl. The smoke passes through the water, and then travels through the hose into the smoker's mouth and throat.

Public health impact of smoking hookah

Hookah smoking results in exposure to harmful levels of carbon-monoxide, heavy metals, and carcinogens from the tobacco and typical heat sources, like wood and charcoal. These toxins can lead to cancer, heart disease, respiratory health problems, and complications with pregnancies. Also, hookah smokers often share mouthpieces, which make them susceptible to transmitting contagious diseases like tuberculosis and hepatitis.

The combination of tobacco smoke from hookahs and the smoke from the heat sources introduce non-smokers to unsafe levels of carbon-monoxide, heavy metals, and carcinogens. These toxins also put non-smokers at risk of developing cancer, heart disease, respiratory health problems, and complications with pregnancies[iii iv v].

While hookah smoking is a dangerous habit for users of any age, the greatest health threat may be the relationship between hookah smoking and teenage use of tobacco products like cigarettes. Teenagers who use hookah products are eight times more likely to experiment with cigarettes[vi].

Survey to describe hookah establishments in North Carolina

Purpose and Methods

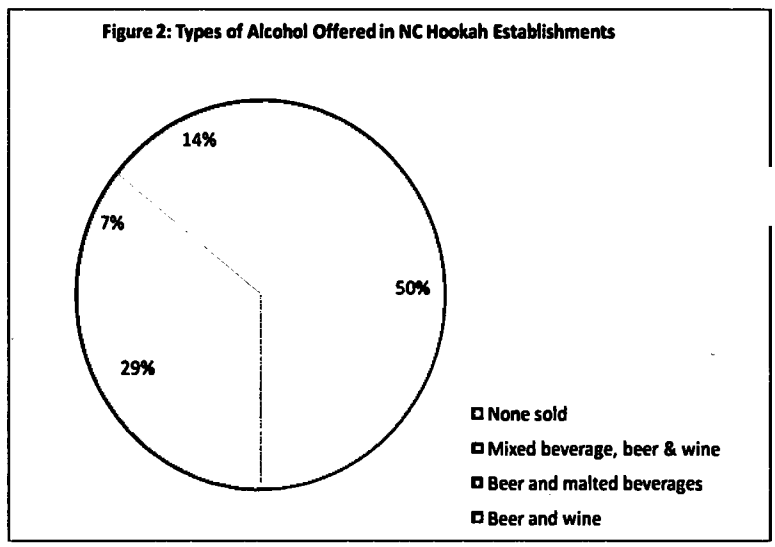
Serving hookah is a relatively new type of business in North Carolina, so there is a lack of information on how they operate. In an effort to fill this information gap, NC Prevention Partners developed and conducted a survey to better understand the business model and experience of hookah establishments in North Carolina.

Initially, the research team identified 29 hookah establishments in North Carolina. These establishments were found through: web searches using google.com, yellowpages.com, and whitepages.com; news articles (online and print); and email correspondence.

The identified hookah establishments were contacted primarily over the phone and email to complete a fourteen-question survey assessing customer demographics, building description, menu items, and sales breakdowns. NCPP contacted each establishment via phone and email several times before determining the respondent as 'refused'. Respondents were either the owner or operating manager. A review of Alcohol Law Enforcement (ALE) records was also conducted to determine what, if any, sales violations had occurred in the identified hookah establishments.

Results

Of the 29 hookah establishments identified, ten were out of business, leaving a total of 19 eligible establishments. Fourteen completed the survey, and five refused, yielding a response rate of 74%.



Most hookah establishments were in buildings with shared walls and also shared an HVAC system with neighboring establishments (69%), and most provided customers with access to outdoor seating (78%). Of those that did not have outdoor seating (n=3), two had potential access to outdoor seating. In total, 93% of the surveyed hookah establishments either already had outdoor seating or had access to outdoor seating.

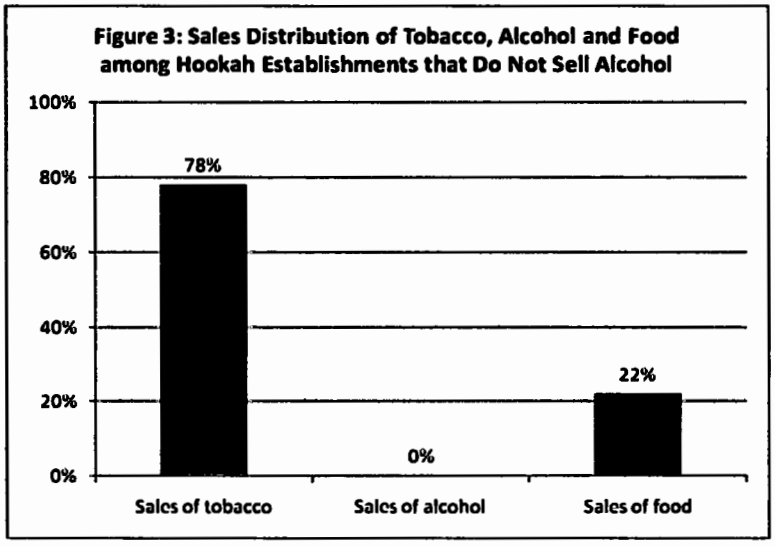
The customer profile of hookah establishments was largely young adults, with 64% of hookah establishments only allowing people eighteen and older to enter. Respondents reported that 3% of their customers were under the age of 18, 47% were aged 18-21, 49% were over the age of 21.

All of the hookah establishments surveyed reported selling food and tobacco, fifty-percent of establishments reported selling any alcohol (Figure 2: Types of Alcohol Offered in NC Hookah Establishments). Of those that sell alcohol, most sell mixed beverages, beer, and wine (57%), while nearly one-third only sell beer and wine (28%).

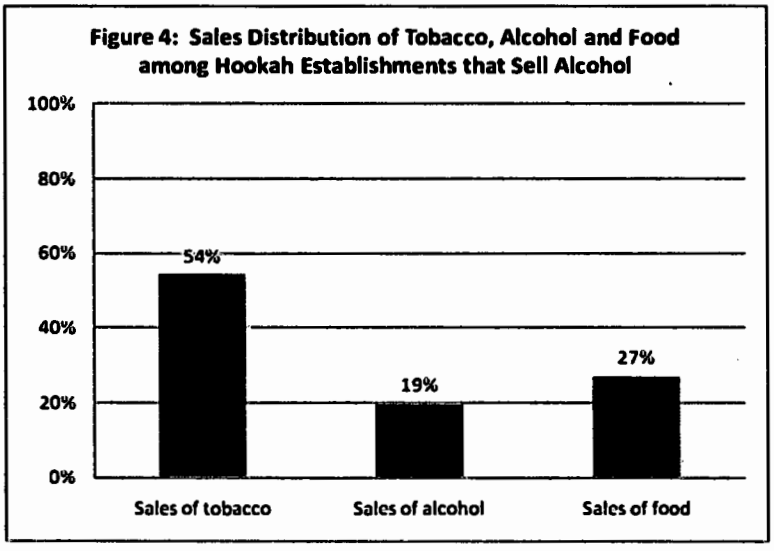
Eight of the fourteen (57%) hookah establishments surveyed had a health department-issued license to prepare and serve food. Of the seven establishments that do not sell alcohol, only one had a license to prepare food. Therefore, the majority of the hookah establishments that did not sell alcohol also did not sell food prepared on site.

Establishments appear to be set up to sell products to-go. Nearly three-quarters (71%) reported selling tobacco for on and off-site consumption, two-thirds (64%) reported selling food for on and off-site consumption, and 42% reported selling alcohol for consumption on and off-site.

Sales breakdowns depended on whether establishments sold alcohol. Of those hookah establishments that did not sell alcohol, respondents reported that the majority of sales came from tobacco (78%) with food making up the remaining sales (22%) (see Figure 3: Sales Distribution of Tobacco, Alcohol and Food among Hookah Establishments that Do Not Sell Alcohol). Most of these establishments can be classified as a 'tobacco shop' since the majority of their sales are generated from tobacco products, and they do not serve foods prepared on site[vii] [viii].



Those hookah establishments that do sell alcohol reported that 54% of the sales were generated from tobacco, 19% from alcohol, and 27% from food (see Figure 4: Sales Distribution of Tobacco, Alcohol and Food among Hookah Establishments that Sell Alcohol). The majority of these businesses could be classified as a 'restaurant' since they serve food prepared on premises[ix]. These establishments do not meet a traditional and common definition of restaurant, however, since the majority of the sales still come from tobacco. Neither do they fit the economic model of a 'cigar bar', which sets the sales threshold of tobacco at 25% and alcohol at 60%[x].



Of the 19 surveyed establishments, two have received ALE violations for selling alcohol to minors, Hookah Bliss[xi] (Chapel Hill, NC) and Hookah Joe's[xii] (Asheville, NC). In addition to these legal reports, additional anonymous reports from citizens and health based groups[xiii] have cited that hookah establishments in North Carolina have sold tobacco to minors under the age of 18.

Summary

Hookah establishments comprise a new and relatively small group of businesses in the state, with nearly one-third identified in our search having gone out of business. The businesses largely cater to young adults, and are primarily located in communities with a major college or university. Even those that sell alcohol are largely a tobacco shop.

In May, 2009, Governor Perdue signed into law General Statute 130A, Article 23, "An Act to Prohibit Smoking in Certain Public Places and Certain Places of Employment," which prohibits smoking in restaurants and bars, with limited exemptions for tobacco shop, cigar bars and non-profit private clubs[xiv]. Nearly half of the establishments that serve hookah now will be exempted from this law because they can be classified as a tobacco shop. Those that sell alcohol still report that the majority of their sales are from tobacco products, not alcohol, making an exemption that mirrors the exemption for cigar bars difficult.

The World Health Organization recommends[xv] that hookah (waterpipe tobacco) be subjected to the same indoor air regulations as cigarettes and other tobacco products. The health impact of hookah use is not as well-described as that of cigarettes and smokeless tobacco use, but the preliminary reports of health impacts on hookah users are troubling, and even more so is that hookah use is highly related to uptake of tobacco use among young adults aged 18-24. Given that the majority of establishments surveyed share a wall and HVAC system with other businesses, there is a risk to neighboring business from the secondhand smoke.

Policy Implications

- ✓ Hookah should be clearly regulated in state and local tobacco policy.
- ✓ Nearly half of hookah establishments meet existing exemptions for tobacco shop retailers in the state smoking law.
- ✓ If an exemption were created for hookah establishments that sell alcohol, the sales requirements for alcohol would have to be lower than the exemption for cigar bars to meet sales data provided by owners and managers in this survey.

References:

[i] Report prepared by Anne Young Thornhill, Samuel Savitz, and Lee Storrow. Survey conducted from June 18, 2009 – July 3, 2009 by Samuel Savitz and Anne Thornhill. For more information, please contact: Anne Thornhill, MPH, Senior Health Promotion Manager, NC Prevention Partners. 88 VilCom Circle, Suite 110, Chapel Hill, NC 27514. (919) 969-7022 www.ncpreventionpartners.org

[ii] World Health Organization Study Group on Tobacco Product Regulation: "Waterpipe Tobacco Smoking: Health Effects, Research Needs, and Recommended Actions by Regulators", 2005.

[iii] Ibid.

[iv] American Cancer Society: "Waterpipe (Hookah) Factsheet", 2005.

[v] American Lung Association: "An Emerging Deadly Trend: Waterpipe Tobacco Use", February, 2007.

[vi] Ibid.

[vii] NC General Statute 18B "Regulation of Alcoholic Beverages, Article 10: Retail Activity" Section 18B-1000 (6).

[viii] NC Division of Public Health and local health department databases on restaurant licenses.

[ix] Ibid.

[x] NC General Statute 130A, Article 23, "An Act to Prohibit Smoking in Certain Public Places and Certain Places of Employment," in effect January 2, 2010.

[xi] North Carolina Alcoholic Beverage Control Commission Minutes. November 6, 2008. Suspension # 00153137AJ-999.

[xii] North Carolina Alcoholic Beverage Control Commission Minutes. Suspension # 00135786AJ-999. April 12, 2007.

[xiii] Harvey, Demetrius. "Hookah Bar." E-mail to Lee Storrow. June 4, 2009.

[xiv] NC General Statute 130A, Article 23.

[xv] WHO, 2005.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 884 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW RELATING TO RENUNCIATIONS AND TO MAKE RELATED AMENDMENTS TO THE NORTH CAROLINA UNIFORM TRUST CODE AND THE LAW GOVERNING POWERS OF ATTORNEY AND ADMINISTRATION OF DECEDENTS' ESTATES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill and recommendation that the House committee substitute bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 140

Short Title:	Amend Domestic Crim. Trespass.	(Public)
Sponsors:	Senators Snow; Atwater, Berger of Franklin, and Dorsett.	
Referred to:	Judiciary II.	

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE OFFENSE OF DOMESTIC CRIMINAL TRESPASS BY MAKING IT A FELONY FOR A PERSON WHO IS THE SUBJECT OF A VALID PROTECTIVE ORDER TO TRESPASS ON PROPERTY WHERE THE PROTECTED PARTY RESIDES AND THAT IS OPERATED AS A SAFE HOUSE OR HAVEN FOR DOMESTIC VIOLENCE VICTIMS WITHOUT REGARD AS TO WHETHER THE PERSON COVERED BY THE PROTECTIVE ORDER IS PRESENT ON THE PREMISES AND TO PROVIDE THAT IT IS AN AGGRAVATING CIRCUMSTANCE FOR FIRST DEGREE MURDER IF A DEFENDANT WHO IS THE SUBJECT OF A VALID PROTECTIVE ORDER COMMITS A MURDER ON THE PREMISES OF A SHELTER FOR VICTIMS OF DOMESTIC VIOLENCE WHERE THE PROTECTED PARTY IS RESIDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-134.3 reads as rewritten:

"**§ 14-134.3. Domestic criminal trespass.**

(a) Any person who enters after being forbidden to do so or remains after being ordered to leave by the lawful occupant, upon the premises occupied by a present or former spouse or by a person with whom the person charged has lived as if married, shall be guilty of a misdemeanor if the complainant and the person charged are living apart; provided, however, that no person shall be guilty if said person enters upon the premises pursuant to a judicial order or written separation agreement which gives the person the right to enter upon said premises for the purpose of visiting with minor children. Evidence that the parties are living apart shall include but is not necessarily limited to:

(1) A judicial order of separation;

(2) A court order directing the person charged to stay away from the premises occupied by the complainant;

(3) An agreement, whether verbal or written, between the complainant and the person charged that they shall live separate and apart, and such parties are in fact living separate and apart; or

(4) Separate places of residence for the complainant and the person charged.

Except as provided in subsection (b) or (c) of this section, upon conviction, said person is guilty of a Class 1 misdemeanor.

(b) A person convicted of a violation of this section is guilty of a Class G felony if the person is trespassing upon property operated as a safe house or haven for victims of domestic violence and the person is armed with a deadly weapon at the time of the offense.

(c) It is unlawful for a person who is subject to a valid protective order that is enforceable under Chapter 50B of the General Statutes to enter property being operated as a

safe house or haven for victims of domestic violence where the protected party is residing after being forbidden to do so or to remain on the premises after being ordered to leave by the lawful occupant, unless the person enters upon the premises pursuant to a judicial order or written separation agreement that gives the person the right to enter upon the premises for the purpose of visiting with minor children. A person who violates this subsection is guilty of this offense regardless of whether any of the parties protected by the protective order are present on the property. A person who violates this subsection is guilty of a Class H felony."

SECTION 2. G.S. 15A-2000(e) is amended by adding a new subdivision to read:

"(12) The defendant was the subject of a valid protective order enforceable under Chapter 50B of the General Statutes at the time of the commission of the capital felony and committed the capital felony on the premises of a safe house or haven for victims of domestic violence where the protected party was residing."

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

SENATE BILL 140:
Amend Domestic Crim. Trespass

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary I	**Date:**	July 22, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Susan Sitze*
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 140 amends the law concerning domestic criminal trespass to make it a Class H felony for a person subject to a domestic violence protective order to enter or remain on the premises of a shelter where the protected party is residing, after that person has been forbidden to enter or has been asked to leave. The bill also makes it an aggravating circumstance for 1st degree murder if a defendant subject to a domestic violence protective order commits murder on the premises of a shelter where the protected party is residing.***

CURRENT LAW: **Domestic Criminal Trespass**: Under G.S. 14-134.3, a person is guilty of domestic criminal trespass if:

- the person enters a premises occupied by the person's present or former spouse, or a person with whom the defendant has lived as if married, after a lawful occupant of the premises has forbidden the person to enter;
- the person refuses to leave a premises occupied by the person's present or former spouse, or a person with whom the defendant has lived as if married, after a lawful occupant of the premises has ordered the person to leave.

An exception applies to persons entering upon the premises pursuant to the terms of a judicial order or a written separation agreement granting the person the right to enter for the purpose of visiting with minor children. ***Under current law, domestic criminal trespass is generally a Class 1 misdemeanor.*** However, if the property entered is a safe house for victims of domestic violence and the defendant is armed with a deadly weapon at the time of entry, then the offense is a Class G felony.

Domestic Violence Protective Orders: Under Chapter 50B of the General Statutes, any person residing in this State may seek relief by filing a civil action alleging domestic against himself or herself or a minor child who resides with or is in his or her custody. Domestic violence occurs when a person commits certain offenses against a person with who he or she has or has had a personal relationship. The term "personal relationship" includes current or former spouses, persons of the opposite sex who live or have lived together, parents and children, grandparents and grandchildren, persons who have a child in common, current or former household members, and persons of the opposite sex who are in a dating relationship. If the court finds that an act of domestic violence has occurred, the court is required to grant a protective order restraining the defendant from further acts of domestic violence. A protective order may include any prohibitions or requirements the court deems necessary to protect any party or any minor child. For example, the court may order a party to refrain from threatening, abusing, following, harassing, or otherwise interfering with the other party, order the eviction of a party from the residence, or award temporary custody of minor children. ***Under current law, violation of a valid protective order is generally a Class A1 misdemeanor.*** Higher penalties apply if the person commits a felony at a time when the person knows the behavior is prohibited by a valid protective order, or if the person knowingly violates a valid protective order after having been previously convicted of three violations. A person who, while in possession of a deadly weapon, knowingly violates a valid protective

order by failing to stay away from a place or a person as directed in the order is guilty of a Class H felony.

BILL ANALYSIS: **Section 1** of the bill would amend the existing criminal trespass law by adding a new subsection that would make it unlawful for a person who is subject to a valid domestic violence protective order to enter or remain on property where the protected party is residing, when the property is being operated as a 'safe house' for victims of domestic violence. Violation of this new provision would be a Class H felony. As under current law, the person would be guilty of the offense if the person enters or remains on the premises after being forbidden to do so by the lawful occupant. The new provision also contains the existing exception for persons entering upon the premises pursuant to the terms of a judicial order or a written separation agreement for the purpose of visiting with minor children. The offense does not require that any parties protected by the protective order actually be present on the property.

Section 2 – Under G.S. 15A-2000, when a defendant is found guilty of 1st degree murder after the State has given notice of its intent to seek the death penalty, the court is required to conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. In all cases in which the death penalty may be authorized, the judge must instruct the jury to consider any aggravating or mitigating circumstance which may be supported by the evidence. Aggravating circumstances which may be considered are set out in G.S. 15A-2000(e). This bill would add as an aggravating circumstance the fact that the defendant was the subject of a valid domestic violence protective order, and the capital felony was committed on the premises of a safe house for victims of domestic violence where the protected party was residing.

EFFECTIVE DATE: The bill would become effective December 1, 2009 and apply to offenses committed on or after that date.

S140-SMSA-127(e1) v1

**Brenda J. Carter, committee counsel, contributed substantially to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 140
PROPOSED HOUSE COMMITTEE SUBSTITUTE S140-CSSA-66 [v.1]

7/22/2009 12:23:23 PM

Short Title: Amend Domestic Crim. Trespass. (Public)

Sponsors:

Referred to:

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE OFFENSE OF DOMESTIC CRIMINAL TRESPASS BY MAKING IT A FELONY FOR A PERSON WHO IS THE SUBJECT OF A VALID PROTECTIVE ORDER TO TRESPASS ON PROPERTY WHERE THE PROTECTED PARTY RESIDES AND THAT IS OPERATED AS A SAFE HOUSE OR HAVEN FOR DOMESTIC VIOLENCE VICTIMS WITHOUT REGARD AS TO WHETHER THE PERSON COVERED BY THE PROTECTIVE ORDER IS PRESENT ON THE PREMISES AND TO PROVIDE THAT IT IS AN AGGRAVATING CIRCUMSTANCE FOR FIRST DEGREE MURDER IF A DEFENDANT WHO IS THE SUBJECT OF A VALID PROTECTIVE ORDER COMMITS A MURDER ON THE PREMISES OF A SHELTER FOR VICTIMS OF DOMESTIC VIOLENCE WHERE THE PROTECTED PARTY IS RESIDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-134.3 reads as rewritten:

"**§ 14-134.3. Domestic criminal trespass.**

(a) Any person who enters after being forbidden to do so or remains after being ordered to leave by the lawful occupant, upon the premises occupied by a present or former spouse or by a person with whom the person charged has lived as if married, shall be guilty of a misdemeanor if the complainant and the person charged are living apart; provided, however, that no person shall be guilty if said person enters upon the premises pursuant to a judicial order or written separation agreement which gives the person the right to enter upon said premises for the purpose of visiting with minor children. Evidence that the parties are living apart shall include but is not necessarily limited to:

(1) A judicial order of separation;

(2) A court order directing the person charged to stay away from the premises occupied by the complainant;

(3) An agreement, whether verbal or written, between the complainant and the person charged that they shall live separate and apart, and such parties are in fact living separate and apart; or

(4) Separate places of residence for the complainant and the person charged.

Except as provided in subsection (b) or (c) of this section, upon conviction, said person is guilty of a Class 1 misdemeanor.

(b) A person convicted of a violation of this section is guilty of a Class G felony if the person is trespassing upon property operated as a safe house or haven for victims of domestic violence and the person is armed with a deadly weapon at the time of the offense.

(c) It is unlawful for a person who is subject to a valid protective order that is enforceable under Chapter 50B of the General Statutes to enter property being operated as a safe house or haven for victims of domestic violence where the protected party is residing after being forbidden to do so or to remain on the premises after being ordered to leave by the lawful occupant. A person who violates this subsection is guilty of this offense regardless of whether any of the parties protected by the protective order are present on the property. A person who violates this subsection is guilty of a Class H felony."

SECTION 2. G.S. 15A-2000(e) is amended by adding a new subdivision to read:

"(12) The defendant was the subject of a valid protective order enforceable under Chapter 50B of the General Statutes at the time of the commission of the capital felony and committed the capital felony on the premises of a safe house or haven for victims of domestic violence where the protected party was residing."

SECTION 3. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 140 A BILL TO BE ENTITLED AN ACT TO AMEND THE OFFENSE OF DOMESTIC CRIMINAL TRESPASS BY MAKING IT A FELONY FOR A PERSON WHO IS THE SUBJECT OF A VALID PROTECTIVE ORDER TO TRESPASS ON PROPERTY WHERE THE PROTECTED PARTY RESIDES AND THAT IS OPERATED AS A SAFE HOUSE OR HAVEN FOR DOMESTIC VIOLENCE VICTIMS WITHOUT REGARD AS TO WHETHER THE PERSON COVERED BY THE PROTECTIVE ORDER IS PRESENT ON THE PREMISES AND TO PROVIDE THAT IT IS AN AGGRAVATING CIRCUMSTANCE FOR FIRST DEGREE MURDER IF A DEFENDANT WHO IS THE SUBJECT OF A VALID PROTECTIVE ORDER COMMITS A MURDER ON THE PREMISES OF A SHELTER FOR VICTIMS OF DOMESTIC VIOLENCE WHERE THE PROTECTED PARTY IS RESIDING.

☒ With a favorable report as to the House committee substitute bill, unfavorable as to the original bill, and recommendation that the House committee substitute bill be re-referred to the Committee on JUDICIARY I.

(FOR JOURNAL USE ONLY)

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

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

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

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, July 29, 2009

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, July 29, 2009, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Lucy Allen, Angela Bryant, Mitch Gillespie, Jim Gulley, Phil Haire, Dewey Hill, Mark Hilton, Sarah Stevens, and Joe Tolson. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Seitz. House Sergeant-at-Arms assisting: Bob Rossi Tom Wilder and Martha Parrish. House Pages: Morgan Burke from Wake County sponsored by Representative Harrell, Taylor Bryant from Lee County sponsored by Representative Love, Amanda Riley from Wake County sponsored by Representative Whilden and Daniel Dunlow from Halifax County sponsored by Representative Wray. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. The following bills were placed before the Committee:

Senate Bill 372-A BILL TO BE ENTITLED: an act to clarify types of nuisances wherein obscene or lewd matter or other conduct prohibited is involved and to provide that individuals engaged in a pattern of street gang activity are subject to injunctions pursuant to Chapter 19 of the General Statutes. Rep. Gillespie moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Sen. McComas to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Bryant was recognized for a motion to report the bill without prejudice. The motion was passed. The Bill, Bill Analysis, PCS and Committee Report are attached. (*Attachment 3*)

By request of the bill sponsor the bill was on the calendar for discussion only. **House Bill 1360-A BILL TO BE ENTITLED: an act to amend the habitual felon law by redefining an habitual felon as a person who has been convicted of three prior felony offenses that were Class g felonies or higher and by changing the sentence imposed on a person convicted as an habitual felon to be one felony class higher than the underlying felony for which the person is convicted, and to direct the post-release supervision and parole commission to study the feasibility of reducing the sentence for certain habitual felons who are currently in prison and to study other possible modifications to the habitual felon law.** Rep. Coates moved that the

proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Rep. Haire to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments.

Again by request of the bill sponsor was bill was on the calendar for discussion only. **Senate Bill 293-A BILL TO BE ENTITLED: an act to amend the qualifications for prospective jurors and to authorize the register of deeds to store an electronic copy of the juror master list.**

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:46 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, July 29, 2009
1:00 PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **Senate Bills**

1.	SB 372	Clarification of Nuisance Abatement Laws.	Senator Boseman
2.	HB 1360	Amend Habitual Offender Law.	Representative Haire
3.	SB 293	Juror Qualifications/Electronic Juror List	Senator Clodfelter

4. **Adjourn**

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Heather Rattelade Atty	Law Off of Bruce T. Cunningham Jr. 225 N. Bennett St. Southern Pines, NC Moore Cty - Resident: Wake.
Debra DeCamillis	UNC-IOG
Mark Newbold	Char-Meck Police Atty
Eddie Lewis	Char Meck Police
John W Smith	AOC
Lisa Rubert	CJPL
Annaliese Dolph	DRNC
John Rittelmeyer	DRNC
S Fayles Hughes	Appellate Defender
Kerry Sutton	NCAJ
Jeff Gray	Fraternal Order of Police
Leon McKillion	Nelson Mullins
Zeb Alley	" "

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joni Allen	BEGINNINGS
MARK WHISENANT	North Carolina Registry of Interpreters for the Deaf
Todd Barlow	NCAJ
	NCDK

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J. Neff	News & Observer
Rick Kane	NCAOC
Liz Taylor	Kocharek Law Group
Pat Porter	NC General Assembly - Research
Paige Roberson	Rep. Moore
Nathan Standley	NCAOC
Peg Dorer	Conference of D.A.s
David Lagos	NC Sentencing & Policy Advisory Comm'n
John Madler	" "
L. Andrews	NCFB

VISITOR REGISTRATION SHEET

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jan Withers	NC DSDHH
Kelly Gracie	NCAJ

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 372
Judiciary II Committee Substitute Adopted 5/12/09

Short Title: Clarification of Nuisance Abatement Laws. (Public)

Sponsors:

Referred to:

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY TYPES OF NUISANCES WHEREIN OBSCENE OR LEWD MATTER OR OTHER CONDUCT PROHIBITED IS INVOLVED AND TO PROVIDE THAT INDIVIDUALS ENGAGED IN A PATTERN OF STREET GANG ACTIVITY ARE SUBJECT TO INJUNCTIONS PURSUANT TO CHAPTER 19 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 19-1(a) reads as rewritten:

"**§ 19-1. What are nuisances under this Chapter.**

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of regular and repeated acts of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance."

SECTION 1.1. G.S. 19-1.2 reads as rewritten:

"**§ 19-1.2. Types of nuisances.**

The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:

(1) Any and every place in the State where lewd films are publicly exhibited as a predominant ~~and regular~~ course of business, or possessed for the purpose of such ~~exhibition;~~exhibition.

(2) Any and every place in the State where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such ~~exhibition;~~exhibition.

(3) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a nuisance under this ~~Article;~~Article.

(4) Any and every place of business in the State in which lewd publications constitute a principal or substantial part of the stock in ~~trade;~~trade.

(5) Any and every lewd publication possessed at a place which is a nuisance under this ~~Article;~~Article.

(6) Every place ~~which, as a regular course of business,~~ which is used for the regular and repeated purposes of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of

alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur. Knowledge of, acquiescence to, or participation in the regular and repeated activities proscribed by this Chapter by any person charged with maintaining a nuisance shall be prima facie evidence that the person used the place for the purposes of such activities."

SECTION 2. G.S. 19-1.1(1a) reads as rewritten:

"**§ 19-1.1. Definitions.**

As used in this Chapter relating to illegal possession or sale of obscene matter or to the other conduct prohibited in G.S. 19-1(a), the following definitions shall apply:

...

(1a) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness. With regard to nuisances involving assignation, prostitution, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the ~~peace;~~peace, or repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses, or evidence that the defendant knew or by the exercise of due diligence should have known of the acts or conduct constitutes proof of knowledge."

SECTION 3. G.S. 19-1.3 reads as rewritten:

"**§ 19-1.3. Personal property as a nuisance; knowledge of nuisance.**

The following are also declared to be nuisances, as personal property used in conducting and maintaining a nuisance under this Chapter:

(1) All moneys paid as admission price to the exhibition of any lewd film found to be a ~~nuisance;~~nuisance.

(2) All valuable consideration received for the sale of any lewd publication which is found to be a ~~nuisance;~~nuisance.

(3) All money or other valuable consideration, vehicles, conveyances, or other property received or used in gambling, prostitution, the illegal sale of alcoholic ~~beverages or~~beverages, the illegal sale of substances proscribed under the North Carolina Controlled Substances ~~Act;~~Act, or the operation of a sexually oriented business in violation of G.S. 19-1(b1),~~as well as the furniture and movable contents of a place used in connection with such prohibited conduct.~~

(4) The furniture and movable contents of a place used in connection with conduct prohibited by G.S. 19-1(a), (b), or (b1).

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in G.S. 19-2.4 upon the place, or its manager, or acting manager, or person then in charge, all such parties are deemed to have knowledge of the contents of the restraining order and the use of the place occurring thereafter. Where the circumstantial proof warrants a determination that a person had knowledge of the nuisance prior to such service of process, the court may make such finding."

SECTION 4. G.S. 19-2.1 reads as rewritten:

"**§ 19-2.1. Action for abatement; injunction.**

Wherever a nuisance is kept, maintained, or exists, as defined in this Article, the Attorney General, district attorney, county, municipality, or any private citizen of the county may maintain a civil action in the name of the State of North Carolina to abate a nuisance under this Chapter, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of

any structure or thing adjudged to be a nuisance under this Chapter; provided, however, that no private citizen may maintain such action where the alleged nuisance involves the illegal possession or sale of obscene or lewd matter.

Upon request from the Attorney General, district attorney, county or municipality, including the sheriff or chief of police of any county or municipality, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety or any other law enforcement agency with jurisdiction may investigate alleged public nuisances and make recommendations regarding actions to abate the public nuisances.

If an action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a temporary restraining order or a ~~temporary~~ preliminary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than one thousand dollars ($1,000), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the temporary restraining order or preliminary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting attorney, the Attorney General, county, or municipality, and no action shall be maintained against any public official or public entity, their employees, or agents for investigating or maintaining an action for abatement of a nuisance under the provisions of this Chapter."

SECTION 5. G.S. 19-2.3 reads as rewritten:

"**§ 19-2.3. Temporary order restraining removal of personal property from premises; service; punishment.**

Where such application for a preliminary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte temporary restraining order in accordance with G.S. 1A-1, Rule 65(b), preserving the status quo and restraining the defendant and all other persons from removing or in any manner interfering with any evidence specifically described, or in any manner removing or interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court granting or refusing such preliminary injunction and until further order of the court thereon. Nothing herein shall be interpreted to allow the prior restraint of the distribution of any matter or the sale of the stock in trade, but an inventory and full accounting of all business transactions involving alleged obscene or lewd matter thereafter shall be required. The inventory provisions provided by this section shall not apply to nuisances occurring at a private dwelling place unless the court finds the private dwelling place is used for profit.

Any person, firm, or corporation enjoined pursuant to this section may file with the court a motion to dissolve any temporary restraining order. Such a motion shall be heard within 24 hours of the time a copy of the motion is served on the complaining party, or on the next day the superior courts are open in the district, whichever is later. At such hearing the complaining party shall have the burden of showing why the restraining order should be continued.

In the event a temporary restraining order is issued, it may be served in accordance with the provisions of G.S. 1A-1, Rule 4, or may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by such service under said ~~Rule 4, delivery and posting.~~ Rule 4. The officer serving such temporary restraining order shall forthwith enter upon the property and make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such temporary restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof, while the same remains in force, is a contempt of court, provided such posted order contains therein a notice to that effect."

SECTION 6. G.S. 19-3(a) reads as rewritten:

"(a) The action provided for in this Chapter ~~shall~~ shall, on application of either of the parties, be set down for trial at the first term of the court and shall have precedence over all other cases except crimes, election contests, or injunctions."

SECTION 7. G.S. 19-6 reads as rewritten:

"**§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.**

Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney's fees and court costs.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages or substances proscribed under the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the ~~peace,~~ peace, or repeated acts or omissions that violate a local ordinance regulating sexually oriented businesses, or such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner.

The clear proceeds of civil penalties and forfeitures provided for in this section, except for penalties and properties that accrue to local governments instead of the State, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 8. G.S. 19-6.1 reads as rewritten:

"**§ 19-6.1. Forfeiture of real property.**

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the manufacture, possession with intent to sell, or sale of controlled substances as defined by the North Carolina Controlled Substances Act, two prior occurrences of the possession of any controlled substance included within Schedule I or II of that Act, or two prior convictions within five years of violation of G.S. 14-72.7, the real

property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section. In the case of the two prior convictions of G.S. 14-72.7, the convictions shall not arise out of the same transaction or occurrence.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

(1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) prior to the action had written notice from the plaintiff, or any governmental agent or entity authorized to bring an action pursuant to this Chapter, that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;

(2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued, begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of ~~narcotic drugs~~controlled substances and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the sale. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title

under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners."

SECTION 9. G.S. 14-50.24 is repealed.

SECTION 10. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 13B.

"North Carolina Street Gang Nuisance Abatement Act.

"**§ 14-50.31. Short title.**

This Article shall be known and may be cited as the "North Carolina Street Gang Nuisance Abatement Act."

"**§ 14-50.32. Real property used by criminal street gangs declared a public nuisance; abatement.**

(a) Public Nuisance. – Any real property that is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal street gang activity, as defined in G.S. 14-50.16, shall constitute a public nuisance and may be abated as provided by Article 1 of Chapter 19 of the General Statutes.

(b) Innocent Activities. – The provisions of this section shall not apply to real property used for criminal street gang activity where the owner or person who has legal possession of the real property does not have actual knowledge that the real property is being used for criminal street gang activity.

"**§ 14-50.33. Street gangs declared a public nuisance.**

(a) A street gang, as defined in G.S. 14-50.16(b), which regularly associates in street gang activities, as defined in G.S. 14-50.16(c), constitutes a public nuisance. For the purposes of this section, "regularly" means at least five times in a period not more than 12 months.

(b) Any person who regularly associates with others to engage in street gang activity, as defined in G.S. 14-50.16, may be made a defendant in a suit, brought pursuant to Chapter 19 of the General Statutes, to abate any public nuisance resulting from street gang activity.

(c) If the court finds that a public nuisance exists under this section, the court may enter an order enjoining the defendant in the suit from engaging in gang activities and impose other reasonable requirements to prevent the defendant or a gang from engaging in future gang activities."

SECTION 11. This act becomes effective October 1, 2009, and applies to offenses committed and abatement actions commenced on or after that date.

SENATE BILL 372:
Clarification of Nuisance Abatement Laws

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary III	**Date:**	July 24, 2009
Introduced by:	Sen. Boseman	**Prepared by:**	Tim Hovis* Committee Counsel
Analysis of:	PCS to Second Edition S372-CSRG-55		

SUMMARY: The Proposed Committee Substitute for Senate Bill 372 makes changes to the nuisance abatement laws to clarify that a place need not be operated solely for the purpose of carrying on nuisance activity in order to be considered a nuisance. The bill also makes a street gang that regularly associates in street gang activity a public nuisance. Individuals who regularly associate with others to engage in street gang activity may be enjoined from engaging in street gang activities.

CURRENT LAW: Article 1 of Chapter 19 of the General Statutes deals with the abatement of nuisances. It provides a civil process by which individuals who control real property may be enjoined from maintaining that property and allowing certain illegal activities occur. The Article covers buildings used for the purpose of: assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances, illegal possession or sale of obscene or lewd matter, repeated acts that constitute a breach of the peace, repeated activities or conditions that violate a local ordinance regulating sexually oriented business, or maintaining a "chop shop".

G.S. 14-50.24 provides real property used by and criminal street gang for the purpose of conducting criminal street gang activity may be declared a public nuisance and enjoined. The following definitions apply:

- "criminal street gang" or "street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, that:
  - (1) Has as one of its primary activities the commission of one or more felony offenses, or delinquent acts that would be felonies if committed by an adult;
  - (2) Has three or more members individually or collectively engaged in, or who have engaged in, criminal street gang activity; and
  - (3) May have a common name, common identifying sign or symbol.
- "criminal street gang activity" means to commit, to attempt to commit, or to solicit, coerce, or intimidate another person to commit an act or acts, with the specific intent that such act or acts were intended or committed for the purpose, or in furtherance, of the person's involvement in a criminal street gang or street gang. An act or acts are included if accompanied by the necessary mens rea or criminal intent and would be chargeable by indictment under the following laws of this State:
  - (1) Any offense under Article 5 of Chapter 90 of the General Statutes (Controlled Substances Act).
  - (2) Any offense under Chapter 14 of the General Statutes except Articles 9, 22A, 40, 46, 47, 59 thereof; and further excepting G.S. 14-78.1, 14-82, 14-86, 14-145, 14-179, 14-183, 14-184, 14-186, 14-190.9, 14-195, 14-197, 14-201, 14-247, 14-248, 14-313 thereof.

- "pattern of criminal street gang activity" means engaging in, and having a conviction for, at least two prior incidents of criminal street gang activity, that have the same or similar purposes, results, accomplices, victims, or methods of commission or otherwise are interrelated by common characteristics and are not isolated and unrelated incidents, provided that at least one of these offenses occurred after December 1, 2008, and the last of the offenses occurred within three years, excluding any periods of imprisonment, of prior criminal street gang activity. Any offenses committed by a defendant prior to indictment for an offense based upon a pattern of street gang activity shall not be used as the basis for any subsequent indictments for offenses involving a pattern of street gang activity.

BILL ANALYSIS:

Sections 1 and 1.1 modify language in G.S. 19-1(a)[1] and 19-1.2(6)[2] that is used to determine whether a particular illegal activity constitutes a nuisance. In the case of Salisbury v. Campbell, 169 N.C. App. 829 (2005), the court held that a plaintiff must show that a defendant leased or used the property for the purpose of the illegal activity. As a means of showing the defendant's purpose in leasing or operating the building, the plaintiff may present evidence that the illegal activity occurred regularly. The defendant may then offer evidence of a lawful business purpose in order to negate the inference that illegal activity was the "sole purpose" of the leasing or using the property. The result of this holding seems to be that if the defendant can show evidence of any legal use, a court could not find a nuisance, regardless of how often or frequently illegal acts occur. The PCS amends G.S. 19-1(a) and 19-1.2(6) to provide that the repeated and regular use of property for illegal purposes constitutes a nuisance. It also provides knowledge, acquiescence or participation in the regular and repeated activities is prima facie evidence that the person used the property for those purposes.

The **PCS** adds language in Section 1.1 to provide that a place shall not be declared a nuisance under Chapter 19, or under G.S. 14-50.32 dealing with gang activity, if the person charged has made or is making a good faith effort to abate the nuisance. This language is added to protect innocent property owners who are cooperating with officials to abate the nuisance.

Section 2 makes the statute consistent by including all nuisances defined in §19-1.

Section 3 amends existing language to clarify that a sexually oriented business is a "for profit" nuisance, the proceeds of which are subject to forfeiture. The proceeds of all "for profit" nuisances are subject to forfeiture, as provided in §19-6. The Section also separates "contents" from "proceeds" and clarifies that the contents of any nuisance, whether "for profit" or not, are declared a nuisance and are subject to a lien and available to satisfy the costs of abatement, as already provided in § 19-1(c) and §19-6.

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[1] **"§ 19-1. What are nuisances under this Chapter.**

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place *for the purpose of* assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance." (Emphasis added.)

[2] **"§ 19-1.2. Types of nuisances.**

"The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:. . .

(6) Every place which, *as a regular course of business, is used for the purposes of* lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur." (Emphasis added.)

Section 4 corrects the terminology used in the statute to conform to the North Carolina Rules of Civil Procedure.

Section 5 deletes unnecessary language.

Section 6 conforms the statute to the way these cases are usually scheduled for trial (like any other civil action), while leaving open the option for any party to insist on an immediate trial.

Section 7 makes the statute consistent by including all nuisances defined in §19-1.

Section 8 corrects certain language to make G.S. 19-6.1 consistent with the remainder of the Article.

Section 9 repeals the provisions in Chapter 14 related to the abatement of street gang activity as a nuisance.

Section 10 re-enacts the language from G.S. 14-50.24 in a new Article 13B. This section also provides that individuals who regularly associate with others to engage in street gang activity may be enjoined from engaging in street gang activities.

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to offenses committed and abatement actions commenced on or after that date.

*This summary was substantially contributed to by Kory Goldsmith, Staff Attorney.

S372-SMRG-98(CSRG-55) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 372
Judiciary II Committee Substitute Adopted 5/12/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S372-CSRG-55 [v.1]

7/24/2009 4:50:05 PM

Short Title: Clarification of Nuisance Abatement Laws. (Public)

Sponsors:

Referred to:

March 4, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY TYPES OF NUISANCES WHEREIN OBSCENE OR LEWD MATTER OR OTHER CONDUCT PROHIBITED IS INVOLVED AND TO PROVIDE THAT INDIVIDUALS ENGAGED IN A PATTERN OF STREET GANG ACTIVITY ARE SUBJECT TO INJUNCTIONS PURSUANT TO CHAPTER 19 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 19-1(a) reads as rewritten:

"**§ 19-1. What are nuisances under this Chapter.**

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of regular and repeated acts of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance."

SECTION 1.1. G.S. 19-1.2 reads as rewritten:

"**§ 19-1.2. Types of nuisances.**

The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:

(1) Any and every place in the State where lewd films are publicly exhibited as a predominant ~~and regular~~ course of business, or possessed for the purpose of such ~~exhibition;~~exhibition.

(2) Any and every place in the State where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such ~~exhibition;~~exhibition.

(3) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a nuisance under this ~~Article;~~Article.

(4) Any and every place of business in the State in which lewd publications constitute a principal or substantial part of the stock in ~~trade;~~trade.

(5) Any and every lewd publication possessed at a place which is a nuisance under this ~~Article;~~Article.

(6) Every place ~~which, as a regular course of business,~~ which is used for the regular and repeated purposes of lewdness, assignation, gambling, the illegal

possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur.

Knowledge of, acquiescence to, or participation in the regular and repeated activities proscribed by this Chapter by any person charged with maintaining a nuisance shall be prima facie evidence that the person used the place for the purposes of such activities. A place shall not be declared a nuisance under this section or under G.S. 14-50.32 if the person charged establishes that they have made and are continuing to make good faith efforts to abate the nuisance."

SECTION 2. G.S. 19-1.1(1a) reads as rewritten:

"**§ 19-1.1. Definitions.**

As used in this Chapter relating to illegal possession or sale of obscene matter or to the other conduct prohibited in G.S. 19-1(a), the following definitions shall apply:

...

(1a) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness. With regard to nuisances involving assignation, prostitution, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the ~~peace;~~peace, or repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses, or evidence that the defendant knew or by the exercise of due diligence should have known of the acts or conduct constitutes proof of knowledge."

SECTION 3. G.S. 19-1.3 reads as rewritten:

"**§ 19-1.3. Personal property as a nuisance; knowledge of nuisance.**

The following are also declared to be nuisances, as personal property used in conducting and maintaining a nuisance under this Chapter:

(1) All moneys paid as admission price to the exhibition of any lewd film found to be a ~~nuisance;~~nuisance.

(2) All valuable consideration received for the sale of any lewd publication which is found to be a ~~nuisance;~~nuisance.

(3) All money or other valuable consideration, vehicles, conveyances, or other property received or used in gambling, prostitution, the illegal sale of alcoholic ~~beverages or~~beverages, the illegal sale of substances proscribed under the North Carolina Controlled Substances ~~Act;~~Act, or the operation of a sexually oriented business in violation of G.S. 19-1(b1).~~as well as the furniture and movable contents of a place used in connection with such prohibited conduct.~~

(4) The furniture and movable contents of a place used in connection with conduct prohibited by G.S. 19-1(a), (b), or (b1).

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in G.S. 19-2.4 upon the place, or its manager, or acting manager, or person then in charge, all such parties are deemed to have knowledge of the contents of the restraining order and the use of the place occurring thereafter. Where the circumstantial proof warrants a determination that a person had knowledge of the nuisance prior to such service of process, the court may make such finding."

SECTION 4. G.S. 19-2.1 reads as rewritten:

"**§ 19-2.1. Action for abatement; injunction.**

Wherever a nuisance is kept, maintained, or exists, as defined in this Article, the Attorney General, district attorney, county, municipality, or any private citizen of the county may maintain a civil action in the name of the State of North Carolina to abate a nuisance under this Chapter, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a nuisance under this Chapter; provided, however, that no private citizen may maintain such action where the alleged nuisance involves the illegal possession or sale of obscene or lewd matter.

Upon request from the Attorney General, district attorney, county or municipality, including the sheriff or chief of police of any county or municipality, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety or any other law enforcement agency with jurisdiction may investigate alleged public nuisances and make recommendations regarding actions to abate the public nuisances.

If an action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a temporary restraining order or a ~~temporary~~ preliminary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than one thousand dollars ($1,000), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the temporary restraining order or preliminary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting attorney, the Attorney General, county, or municipality, and no action shall be maintained against any public official or public entity, their employees, or agents for investigating or maintaining an action for abatement of a nuisance under the provisions of this Chapter."

SECTION 5. G.S. 19-2.3 reads as rewritten:

"**§ 19-2.3. Temporary order restraining removal of personal property from premises; service; punishment.**

Where such application for a preliminary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte temporary restraining order in accordance with G.S. 1A-1, Rule 65(b), preserving the status quo and restraining the defendant and all other persons from removing or in any manner interfering with any evidence specifically described, or in any manner removing or interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court granting or refusing such preliminary injunction and until further order of the court thereon. Nothing herein shall be interpreted to allow the prior restraint of the distribution of any matter or the sale of the stock in trade, but an inventory and full accounting of all business transactions involving alleged obscene or lewd matter thereafter shall be required. The inventory provisions provided by this section shall not apply to nuisances occurring at a private dwelling place unless the court finds the private dwelling place is used for profit.

Any person, firm, or corporation enjoined pursuant to this section may file with the court a motion to dissolve any temporary restraining order. Such a motion shall be heard within 24 hours of the time a copy of the motion is served on the complaining party, or on the next day the superior courts are open in the district, whichever is later. At such hearing the complaining party shall have the burden of showing why the restraining order should be continued.

In the event a temporary restraining order is issued, it may be served in accordance with the provisions of G.S. 1A-1, Rule 4, or may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place,

or by such service under said ~~Rule 4, delivery and posting.~~ Rule 4. The officer serving such temporary restraining order shall forthwith enter upon the property and make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such temporary restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof, while the same remains in force, is a contempt of court, provided such posted order contains therein a notice to that effect."

SECTION 6. G.S. 19-3(a) reads as rewritten:

"(a) The action provided for in this Chapter ~~shall~~ shall, on application of either of the parties, be set down for trial at the first term of the court and shall have precedence over all other cases except crimes, election contests, or injunctions."

SECTION 7. G.S. 19-6 reads as rewritten:

"**§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.**

Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney's fees and court costs.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages or substances proscribed under the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the ~~peace,~~ peace, or repeated activities or conditions that violate a local ordinance regulating sexually oriented businesses, or such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner.

The clear proceeds of civil penalties and forfeitures provided for in this section, except for penalties and properties that accrue to local governments instead of the State, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 8. G.S. 19-6.1 reads as rewritten:

"**§ 19-6.1. Forfeiture of real property.**

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least

two prior occurrences within five years of the manufacture, possession with intent to sell, or sale of controlled substances as defined by the North Carolina Controlled Substances Act, two prior occurrences of the possession of any controlled substance included within Schedule I or II of that Act, or two prior convictions within five years of violation of G.S. 14-72.7, the real property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section. In the case of the two prior convictions of G.S. 14-72.7, the convictions shall not arise out of the same transaction or occurrence.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

(1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) prior to the action had written notice from the plaintiff, or any governmental agent or entity authorized to bring an action pursuant to this Chapter, that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;

(2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued, begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of ~~narcotic drugs~~controlled substances and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the lien or security interest from the proceeds of the sale. If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to

have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners."

SECTION 9. G.S. 14-50.24 is repealed.

SECTION 10. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 13B.

"North Carolina Street Gang Nuisance Abatement Act.

"**§ 14-50.31. Short title.**

This Article shall be known and may be cited as the "North Carolina Street Gang Nuisance Abatement Act."

"**§ 14-50.32. Real property used by criminal street gangs declared a public nuisance; abatement.**

(a) Public Nuisance. – Any real property that is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal street gang activity, as defined in G.S. 14-50.16, shall constitute a public nuisance and may be abated as provided by and subject to the provisions of Article 1 of Chapter 19 of the General Statutes.

(b) Innocent Activities. – The provisions of this section shall not apply to real property used for criminal street gang activity where the owner or person who has legal possession of the real property does not have actual knowledge that the real property is being used for criminal street gang activity.

"**§ 14-50.33. Street gangs declared a public nuisance.**

(a) A street gang, as defined in G.S. 14-50.16(b), which regularly associates in street gang activities, as defined in G.S. 14-50.16(c), constitutes a public nuisance. For the purposes of this section, "regularly" means at least five times in a period not more than 12 months.

(b) Any person who regularly associates with others to engage in street gang activity, as defined in G.S. 14-50.16, may be made a defendant in a suit, brought pursuant to Chapter 19 of the General Statutes, to abate any public nuisance resulting from street gang activity.

(c) If the court finds that a public nuisance exists under this section, the court may enter an order enjoining the defendant in the suit from engaging in gang activities and impose other reasonable requirements to prevent the defendant or a gang from engaging in future gang activities."

SECTION 11. This act becomes effective October 1, 2009, and applies to offenses committed and abatement actions commenced on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 372 A BILL TO BE ENTITLED AN ACT TO CLARIFY TYPES OF NUISANCES WHEREIN OBSCENE OR LEWD MATTER OR OTHER CONDUCT PROHIBITED IS INVOLVED AND TO PROVIDE THAT INDIVIDUALS ENGAGED IN A PATTERN OF STREET GANG ACTIVITY ARE SUBJECT TO INJUNCTIONS PURSUANT TO CHAPTER 19 OF THE GENERAL STATUTES.

☒ Without prejudice as to the House committee substitute bill, unfavorable as to Senate Committee Substitute Bill and recommendation that the House committee substitute bill be re-referred to the Committee on JUDICIARY III.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1360
Committee Substitute Favorable 5/12/09

Short Title: Amend Habitual Offender Law. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE HABITUAL FELON LAW BY REDEFINING AN HABITUAL FELON AS A PERSON WHO HAS BEEN CONVICTED OF THREE PRIOR FELONY OFFENSES THAT WERE CLASS G FELONIES OR HIGHER AND BY CHANGING THE SENTENCE IMPOSED ON A PERSON CONVICTED AS AN HABITUAL FELON TO BE ONE FELONY CLASS HIGHER THAN THE UNDERLYING FELONY FOR WHICH THE PERSON IS CONVICTED, AND TO DIRECT THE POST-RELEASE SUPERVISION AND PAROLE COMMISSION TO STUDY THE FEASIBILITY OF REDUCING THE SENTENCE FOR CERTAIN HABITUAL FELONS WHO ARE CURRENTLY IN PRISON AND TO STUDY OTHER POSSIBLE MODIFICATIONS TO THE HABITUAL FELON LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-7.1 reads as rewritten:

"**§ 14-7.1. Persons defined as habitual felons.**

Any person who has been convicted of or pled guilty to three felony offenses that were Class G felonies or higher or the equivalent thereof in any federal court or state court in the United States or combination thereof is declared to be an habitual felon. For the purpose of this Article, a felony offense is defined as an offense which is a ~~felony~~ Class G felony or higher under the laws of the State or other sovereign wherein a plea of guilty was entered or a conviction was returned regardless of the sentence actually imposed. Provided, however, that federal offenses relating to the manufacture, possession, sale and kindred offenses involving intoxicating liquors shall not be considered felonies for the purposes of this Article. For the purposes of this Article, felonies committed before a person attains the age of 18 years shall not constitute more than one felony. The commission of a second felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the first felony. The commission of a third felony shall not fall within the purview of this Article unless it is committed after the conviction of or plea of guilty to the second felony. Pleas of guilty to or convictions of felony offenses prior to July 6, 1967, shall not be felony offenses within the meaning of this Article. Any felony offense to which a pardon has been extended shall not for the purpose of this Article constitute a felony. The burden of proving such pardon shall rest with the defendant and the State shall not be required to disprove a pardon."

SECTION 2. G.S. 14-7.2 reads as rewritten:

"**§ 14-7.2. Punishment.**

When any person is charged by indictment with the commission of a felony that is a Class G felony or higher under the laws of the State of North Carolina and is also charged with being an habitual felon as defined in G.S. 14-7.1, he must, upon conviction, be sentenced and

punished as an habitual felon, as in this Chapter provided, except in those cases where the death penalty or a life sentence is imposed."

SECTION 3. G.S. 14-7.3 reads as rewritten:

"**§ 14-7.3. Charge of habitual felon.**

An indictment which charges a person who is an habitual felon within the meaning of G.S. 14-7.1 with the commission of any felony that is a Class G felony or higher under the laws of the State of North Carolina must, in order to sustain a conviction of habitual felon, also charge that said person is an habitual felon. The indictment charging the defendant as an habitual felon shall be separate from the indictment charging him with the principal felony. An indictment which charges a person with being an habitual felon must set forth the date that prior felony offenses were committed, the name of the state or other sovereign against whom said felony offenses were committed, the dates that pleas of guilty were entered to or convictions returned in said felony offenses, and the identity of the court wherein said pleas or convictions took place. No defendant charged with being an habitual felon in a bill of indictment shall be required to go to trial on said charge within 20 days of the finding of a true bill by the grand jury; provided, the defendant may waive this 20-day period."

SECTION 4. G.S. 14-7.4 reads as rewritten:

"**§ 14-7.4. Evidence of prior convictions of felony offenses.**

In all cases where a person is charged under the provisions of this Article with being an habitual felon, the record or records of prior convictions of felony offenses shall be admissible in evidence, but only for the purpose of proving that said person has been convicted of former felony ~~offenses.~~ offenses and that those offenses were at least Class G felonies or higher. A prior conviction may be proved by stipulation of the parties or by the original or a certified copy of the court record of the prior conviction. The original or certified copy of the court record, bearing the same name as that by which the defendant is charged, shall be prima facie evidence that the defendant named therein is the same as the defendant before the court, and shall be prima facie evidence of the facts set out therein."

SECTION 5. G.S. 14-7.5 reads as rewritten:

"**§ 14-7.5. Verdict and judgment.**

When an indictment charges an habitual felon with a ~~felony~~ Class G felony or higher as above provided and an indictment also charges that said person is an habitual felon as provided herein, the defendant shall be tried for the principal felony as provided by law. The indictment that the person is an habitual felon shall not be revealed to the jury unless the jury shall find that the defendant is guilty of the principal felony or other felony with which he is charged. If the jury finds the defendant guilty of a ~~felony,~~ felony that is a Class G felony or higher, the bill of indictment charging the defendant as an habitual felon may be presented to the same jury. Except that the same jury may be used, the proceedings shall be as if the issue of habitual felon were a principal charge. If the jury finds that the defendant is an habitual felon, the trial judge shall enter judgment according to the provisions of this Article. If the jury finds that the defendant is not an habitual felon, the trial judge shall pronounce judgment on the principal felony or felonies as provided by law."

SECTION 6. G.S. 14-7.6 reads as rewritten:

"**§ 14-7.6. Sentencing of habitual felons.**

When an habitual felon as defined in this Article commits any felony that is a Class G felony or higher under the laws of the State of North Carolina, the felon must, upon conviction or plea of guilty under indictment as provided in this Article (except where the felon has been sentenced as a Class A, B1, or B2 felon) be sentenced ~~as a Class C felon.~~ one felony class higher than the underlying felony for which the person was convicted. Notwithstanding G.S. 15A-1340.17, intermediate punishment is not authorized for a person sentenced as a habitual felon under this Article. In determining the prior record level, convictions used to establish a person's status as an habitual felon shall not be used. Sentences imposed under this

Article shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced under this section."

SECTION 7. The Post-Release Supervision and Parole Commission shall evaluate the current prison population and identify the prisoners who are habitual offenders but whose felony offenses consist solely of Class I and Class H felonies. The Commission shall study the feasibility of reducing the sentence for each prisoner in that particular habitual offender category as follows: (i) reduce the prisoner's sentence to equal the active time required by the sentencing grid under G.S. 15A-1340.17 for the highest level of the highest underlying felony in the indictment that charged the prisoner as an habitual felon, and (ii) also give credit to the prisoner for time served. In its study the Commission shall also consider the feasibility of amending the current habitual felon law to provide that Class G and Class F felony convictions on a defendant's record that are at least 10 years old from the date the defendant's citizenship rights have been restored shall not be considered. The Commission may also consider any other issues relevant to its studies under this section.

SECTION 8. This act becomes effective December 1, 2009.

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, August 5, 2009

The House Committee on Ways and Means//Broadband met on Wednesday, August 5 2009, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Lucy Allen, Angela Bryant, Mitch Gillespie, Jim Gulley, Phil Haire, Dewey Hill, Mark Hilton, Sarah Stevens, and Joe Tolson. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Sitz. House Sergeant-at-Arms assisting: Martha Gadison, Reggie Sills and Bob Rossi. House Pages: Zaki Haidary from Wake County sponsored by Rep. Lucy Allen, Matthew Drelous from Guilford County sponsored by Rep. Wiley. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. The following bills were placed before the Committee:

House Bill 749-A BILL TO BE ENTITLED: an act to revise and clarify the requirements for uninsured and underinsured motorist coverage in motor Vehicle liability insurance policies. Rep. Haire moved that the proposed committee substitute be before the committee. Hearing no objection, The Chair called upon the bill sponsor Senator Clodfelter to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, Proposed Committee Substitute and Committee Report are attached. *(Attachment 3)*

Senate Bill 293-A BILL TO BE ENTITLED: an act to amend the qualifications for prospective jurors and to authorize the register of deeds to store an electronic copy of the juror master list. Rep. Bryant moved that the proposed committee substitute be before the committee. Hearing no objection, Chairman Faison began to explain the bill. Due to time restraints Chairman Faison had to displace this bill in hopes of having a special meeting in the near future. The Bill, Amendments and Proposed Committee Substitute are attached. *(Attachment 4)*

With no further time for business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:48 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, August 5, 2009
1:00 PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **Senate Bills**

1.	SB 749	Revise UM/UIM Liability Coverage Requirements.	Senator Clodfelter
2.	SB 293	Juror Qualifications/Electronic Juror List.	Senator Clodfelter

4. **Adjourn**

VISITOR REGISTRATION SHEET

Ways & Means — 8-4-09

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Casandra White	NCAOC
Sam Withers	N DSDHHS
Debra DeCamillis	UNC-IOG
Amy McConkey	Smith Anderson
Alicia Dan	MWC
Victoria Hawkins	Bode & Assoc
Sarah Preston	ACLU-NC
Brittany Farrell	NCFPC
[illegible]	~~DHHS~~
Stephen Williams	NCDOT
[illegible]	DHHS

VISITOR REGISTRATION SHEET

Ways & Means — 8-4-09

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Robert Pasch	Young Moore
John McMillan	MFAS
Susan Valenni	Nationwide
Jennifer Cohen	IFNC
Annalise Dolph	DRNC
John Rittelmeyer	DRNC
Julia Leggett	The Arc of NC
Jennifer Mahan	MHANC
Staples Hughes	Appellate Defender
Rich Kane	NCAOC
John W Smith	AOC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 3

SENATE BILL 749
Commerce Committee Substitute Adopted 5/7/09
House Committee Substitute Favorable 7/6/09

Short Title: Revise UM/UIM Liability Coverage Requirements. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CLARIFY THE REQUIREMENTS FOR UNINSURED AND UNDERINSURED MOTORIST COVERAGE IN MOTOR VEHICLE LIABILITY INSURANCE POLICIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-279.21 reads as rewritten:

"**§ 20-279.21. "Motor vehicle liability policy" defined.**

(a) A "motor vehicle liability policy" as said term is used in this Article shall mean an owner's or an operator's policy of liability insurance, certified as provided in G.S. 20-279.19 or 20-279.20 as proof of financial responsibility, and issued, except as otherwise provided in G.S. 20-279.20, by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance:

(1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;

(2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, or any other persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: thirty thousand dollars ($30,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, sixty thousand dollars ($60,000) because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident; and

(3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles

because of bodily injury, sickness or disease, including death, resulting therefrom. ~~therefrom, with limits equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy. The named insured may purchase uninsured motorist bodily injury coverage with greater limits, subject to the limitation that in no event shall uninsured motorist bodily injury coverage limits exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident.~~ The limits of such uninsured motorist bodily injury coverage shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy; provided, however, that (i) the limits shall not exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident regardless of whether the highest limits of bodily injury liability coverage for any one vehicle insured under the policy exceed those limits and (ii) a named insured may purchase greater or lesser limits, except that the limits shall not be less than the bodily injury liability limits required pursuant to subdivision (2) of this subsection, and in no event shall an insurer be required by this subdivision to sell uninsured motorist bodily injury coverage at limits that exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident. ~~The~~ When the policy is issued or renewed, the insurer shall notify the named insured as provided in subsection (m) of this section. ~~of his or her right to purchase uninsured motorist bodily injury coverage with greater limits, when the policy is issued and renewed, as provided in subsection (m) of this section.~~ The provisions shall include coverage for the protection of persons insured ~~thereunder~~ under the policy who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured. ~~insured, with a limit in the aggregate for all insureds in any one accident equal to the highest limits of property damage liability coverage for any one vehicle insured in the owner's policy of liability insurance, and~~ The limits of such uninsured motorist property damage coverage shall be equal to the highest limits of property damage liability coverage for any one vehicle insured under the policy; provided, however, that (i) the limits shall not exceed one million dollars ($1,000,000) per accident regardless of whether the highest limits of property damage liability coverage for any one vehicle insured under the policy exceed those limits and (ii) a named insured may purchase lesser limits, except that the limits shall not be less than the property damage liability limits required pursuant to subdivision (2) of this subsection. When the policy is issued or renewed, the insurer shall notify the named insured as provided in subsection (m) of this section. For uninsured motorist property damage coverage, the limits purchased by the named insured shall be subject, for each insured, to an exclusion of the first one hundred dollars ($100.00) of such damages. The provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that the other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a prima facie presumption that the operator of the other motor vehicle was uninsured at the time of the accident with the insured for the purposes of recovery under this provision of the insured's liability insurance policy.

If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of a policy that insures more than one motor vehicle, that person shall not be permitted to combine the uninsured motorist limit applicable to any one motor vehicle with the uninsured motorist limit applicable to any other motor vehicle to determine the total amount of uninsured motorist coverage available to that person. If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of more than one policy, that person may combine the highest applicable uninsured motorist limit available under each policy to determine the total amount of uninsured motorist coverage available to that person. The previous sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-10(1) and (2).

In addition to the above requirements relating to uninsured motorist insurance, every policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle, which policy is delivered or issued for delivery in this State, shall be subject to the following provisions which need not be contained therein.

a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner provided by law; provided however, that the determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether the pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law. The failure to post notice to the insurer 60 days in advance of the initiation of suit shall not be grounds for dismissal of the action, but shall automatically extend the time for the filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

b. Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger)

cannot be ascertained, the insured may institute an action directly against the insurer: Provided, in that event, the insured, or someone in his behalf, shall report the accident within 24 hours or as soon thereafter as may be practicable, to a police officer, peace officer, other judicial officer, or to the Commissioner of Motor Vehicles. The insured shall also within a reasonable time give notice to the insurer of his injury, the extent thereof, and shall set forth in the notice the time, date and place of the injury. Thereafter, on forms to be mailed by the insurer within 15 days following receipt of the notice of the accident to the insurer, the insured shall furnish to insurer any further reasonable information concerning the accident and the injury that the insurer requests. If the forms are not furnished within 15 days, the insured is deemed to have complied with the requirements for furnishing information to the insurer. Suit may not be instituted against the insurer in less than 60 days from the posting of the first notice of the injury or accident to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent. The failure to post notice to the insurer 60 days before the initiation of the suit shall not be grounds for dismissal of the action, but shall automatically extend the time for filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

Provided under this section the term "uninsured motor vehicle" shall include, but not be limited to, an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability within the limits specified therein because of insolvency.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of coverage, the insurer making payment shall, to the extent thereof, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of that person against any person or organization legally responsible for the bodily injury for which the payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is that insurance but the insurance company writing the insurance denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of the bodily injury and property damage liability insurance, or the owner of the motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

a. A motor vehicle owned by the named insured;
b. A motor vehicle that is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;
c. A motor vehicle that is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);
d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or
e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

For purposes of this section "persons insured" means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal representative of any of the above or any other person or persons in lawful possession of the motor vehicle.

Notwithstanding any language or provision to the contrary, no motor vehicle other than a motor vehicle covered under a personal auto policy, the form for which is promulgated by the North Carolina Rate Bureau pursuant to Article 36 of Chapter 58 of the General Statutes and approved by the Commissioner, shall be required by this subdivision to be covered by uninsured motorist coverage or in any way be subject to the requirements of this subdivision. For the purposes of this subdivision, a personal auto policy shall not include any endorsement to any policy other than a personal auto policy, even if the form for such endorsement is promulgated by the North Carolina Rate Bureau and approved by the Commissioner.~~the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide uninsured motorist coverage. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide uninsured motorist coverage in accordance with the provisions of this subsection in amounts equal to the highest limits of bodily injury and property damage liability coverage for any one noncommercial motor vehicle insured under the policy, subject to the right of the insured to purchase higher uninsured motorist bodily injury liability coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, noncommercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection.~~

(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this subsection. ~~section, with limits equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy. The named insured may purchase underinsured motorist coverage with greater limits, subject to the limitation that in no event shall the underinsured~~

~~motorist coverage limits exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident.~~ The limits of such underinsured motorist bodily injury coverage shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy; provided, however, that (i) the limits shall not exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident regardless of whether the highest limits of bodily injury liability coverage for any one vehicle insured under the policy exceed those limits, (ii) a named insured may purchase greater or lesser limits, except that the limits shall exceed the bodily injury liability limits required pursuant to subdivision (2) of this subsection, and in no event shall an insurer be required by this subdivision to sell underinsured motorist bodily injury coverage at limits that exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident, and (iii) the limits shall be equal to the limits of uninsured motorist bodily injury coverage purchased pursuant to subdivision (3) of this subsection. When the policy is issued or renewed, the ~~The~~ insurer shall notify the named insured as provided in subsection (m) of this section. ~~his or her right to purchase underinsured motorist coverage with greater limits, when the policy is issued and renewed, as provided in subsection (m) of this section.~~ An "uninsured motor vehicle," as described in subdivision (3) of this subsection, includes an "underinsured highway vehicle," which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. For purposes of an underinsured motorist claim asserted by a person injured in an accident where more than one person is injured, a highway vehicle will also be an "underinsured highway vehicle" if the total amount actually paid to that person under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. Notwithstanding the immediately preceding sentence, a highway vehicle shall not be an "underinsured motor vehicle" for purposes of an underinsured motorist claim under an owner's policy insuring that vehicle unless the owner's policy insuring that vehicle provides underinsured motorist coverage with limits that are greater than that policy's bodily injury liability limits. For the purposes of this subdivision, the term "highway vehicle" means a land motor vehicle or trailer other than (i) a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle while located for use as a residence or premises. The provisions of subdivision (3) of this subsection shall apply to the coverage required by this subdivision. Underinsured motorist coverage is deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of that liability coverage for the purpose of any single liability claim presented for underinsured motorist coverage is deemed to occur when either (a) the limits of liability per claim have been paid upon

the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid. Underinsured motorist coverage is deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant under the exhausted liability policy.

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; provided that this sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-15(9) and (10). The underinsured motorist limits applicable to any one motor vehicle under a policy shall not be combined with or added to the limits applicable to any other motor vehicle under that policy.

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway vehicle, provided that the amount of the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice before a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of that notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that the insurer be named as a party. Any claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for moneys beyond those paid by the underinsured motorist insurer shall before doing so give notice to the insurer and give the insurer, at its expense, the opportunity to participate in the prosecution of the claim. Upon the entry of judgment in a suit upon any such claim in which the underinsured motorist insurer and claimant are

joined, payment upon the judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in the action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in the action on his separate behalf. If an underinsured motorist insurer, following the approval of the application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, the insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to the owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

As consideration for payment of policy limits by a liability insurer on behalf of the owner, operator, or maintainer of an underinsured motor vehicle, a party injured by an underinsured motor vehicle may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the vehicle any judgment that exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available underinsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing underinsured motorist coverage from pursuing any right of subrogation.

Notwithstanding <u>any language or provision to the contrary, no motor vehicle other than a motor vehicle covered under a personal auto policy, the form for which is promulgated by the North Carolina Rate Bureau pursuant to Article 36 of Chapter 58 of the General Statutes and approved by the Commissioner, shall be required by this subdivision to be covered by underinsured motorist coverage or in any way be subject to the requirements of this subdivision. For the purposes of this subdivision, a personal auto</u>

policy shall not include any endorsement to any policy other than a personal auto policy, even if the form for such endorsement is promulgated by the North Carolina Rate Bureau and approved by the Commissioner.~~the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide underinsured motorist coverage. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide underinsured motorist coverage in accordance with the provisions of this subsection in an amount equal to the highest limits of bodily injury liability coverage for any one noncommercial motor vehicle insured under the policy, subject to the right of the insured to purchase higher underinsured motorist bodily injury liability coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, noncommercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection.~~

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, and within 30 days following the date of its delivery to him of any motor vehicle owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this Article as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this Article.

(e) Uninsured or underinsured motorist coverage that is provided as part of a motor vehicle liability policy shall insure that portion of a loss uncompensated by any workers' compensation law and the amount of an employer's lien determined pursuant to G.S. 97-10.2(h) or (j). In no event shall this subsection be construed to require that coverage exceed the applicable uninsured or underinsured coverage limits of the motor vehicle policy or allow a recovery for damages already paid by workers' compensation. The policy need not insure a loss from any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(1) Except as hereinafter provided, the liability of the insurance carrier with respect to the insurance required by this Article shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy. As to policies issued to insureds in this State under the assigned risk plan or through the North Carolina Motor Vehicle Reinsurance Facility, a default judgment taken against such an insured shall not be used as a basis for obtaining judgment against the insurer unless counsel for the plaintiff has forwarded to the insurer, or to one of its agents, by registered or certified

mail with return receipt requested, or served by any other method of service provided by law, a copy of summons, complaint, or other pleadings, filed in the action. The return receipt shall, upon its return to plaintiff's counsel, be filed with the clerk of court wherein the action is pending against the insured and shall be admissible in evidence as proof of notice to the insurer. The refusal of insurer or its agent to accept delivery of the registered mail, as provided in this section, shall not affect the validity of such notice and any insurer or agent of an insurer refusing to accept such registered mail shall be charged with the knowledge of the contents of such notice. When notice has been sent to an agent of the insurer such notice shall be notice to the insurer. The word "agent" as used in this subsection shall include, but shall not be limited to, any person designated by the insurer as its agent for the service of process, any person duly licensed by the insurer in the State as insurance agent, any general agent of the company in the State of North Carolina, and any employee of the company in a managerial or other responsible position, or the North Carolina Commissioner of Insurance; provided, where the return receipt is signed by an employee of the insurer or an employee of an agent for the insurer, shall be deemed for the purposes of this subsection to have been received. The term "agent" as used in this subsection shall not include a producer of record or broker, who forwards an application for insurance to the North Carolina Motor Vehicle Reinsurance Facility.

The insurer, upon receipt of summons, complaint or other process, shall be entitled, upon its motion, to intervene in the suit against its insured as a party defendant and to defend the same in the name of its insured. In the event of such intervention by an insurer it shall become a named party defendant. The insurer shall have 30 days from the signing of the return receipt acknowledging receipt of the summons, complaint or other pleading in which to file a motion to intervene, along with any responsive pleading, whether verified or not, which it may deem necessary to protect its interest: Provided, the court having jurisdiction over the matter may, upon motion duly made, extend the time for the filing of responsive pleading or continue the trial of the matter for the purpose of affording the insurer a reasonable time in which to file responsive pleading or defend the action. If, after receiving copy of the summons, complaint or other pleading, the insurer elects not to defend the action, if coverage is in fact provided by the policy, the insurer shall be bound to the extent of its policy limits to the judgment taken by default against the insured, and noncooperation of the insured shall not be a defense.

If the plaintiff initiating an action against the insured has complied with the provisions of this subsection, then, in such event, the insurer may not cancel or annul the policy as to such liability and the defense of noncooperation shall not be available to the insurer: Provided, however, nothing in this section shall be construed as depriving an insurer of its defenses that the policy was not in force at the time in question, that the operator was not an "insured" under policy provisions, or that the policy had been lawfully canceled at the time of the accident giving rise to the cause of action.

Provided further that the provisions of this subdivision shall not apply when the insured has delivered a copy of the summons, complaint or other pleadings served on him to his insurance carrier within the time provided by law for filing answer, demurrer or other pleadings.

(2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;

(3) The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision (2) of subsection (b) of this section;

(4) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the Article shall constitute the entire contract between the parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this Article. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this Article.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

(l) A party injured by an uninsured motor vehicle covered under a policy in amounts less than those set forth in G.S. 20-279.5, may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the uninsured vehicle any judgment that exceeds the liability policy limits, as consideration for payment of any applicable policy limits by the insurer where judgment exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available uninsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing uninsured motorist coverage from pursuing any right of subrogation.

(m) Every insurer that sells motor vehicle liability policies subject to the requirements of subdivisions (b)(3) and (b)(4) of this section ~~shall~~ shall, when issuing or renewing a policy, give reasonable notice to the named ~~insured, when the policy is issued and renewed,~~ insured of all of the following:

(1) The named insured is required to purchase uninsured motorist bodily injury coverage, uninsured motorist property damage coverage, and, if applicable, underinsured motorist bodily injury coverage.

(2) The named insured's uninsured motorist bodily injury coverage limits shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy unless the insured elects to purchase greater or lesser limits for uninsured motorist bodily injury coverage.

(3) The named insured's uninsured motorist property damage coverage limits shall be equal to the highest limits of property damage liability coverage for any one vehicle insured under the policy unless the insured elects to purchase greater or lesser limits for uninsured motorist property damage coverage.

(4) The named insured's underinsured motorist bodily injury coverage limits, if applicable, shall be equal to the highest limits of bodily injury liability

coverage for any one vehicle insured under the policy unless the insured elects to purchase greater or lesser limits for underinsured motorist bodily injury coverage.

(5) ~~that the~~ The named insured may purchase uninsured motorist bodily injury coverage and, if applicable, underinsured motorist coverage with limits up to one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident.

An insurer shall be deemed to have given reasonable notice if it includes the following or substantially similar language on the policy's original and renewal declarations pages or in a separate notice accompanying the original and renewal declarations pages in at least 10 point type:

"NOTICE: YOU ARE REQUIRED TO PURCHASE UNINSURED MOTORIST BODILY INJURY COVERAGE, UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE AND, IN SOME CASES, UNDERINSURED MOTORIST BODILY INJURY COVERAGE. THIS INSURANCE PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES AND PROPERTY DAMAGE CAUSED BY THE NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY COVERAGE, UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE WITH LIMITS UP TO ONE MILLION DOLLARS ($1,000,000) PER PERSON AND ONE MILLION DOLLARS ($1,000,000) PER ~~ACCIDENT.~~ ACCIDENT OR AT SUCH LESSER LIMITS YOU CHOOSE, BUT IN NO CASE LESS THAN THE MINIMUM LIMITS FOR THE BODILY INJURY AND PROPERTY DAMAGE COVERAGE THAT ARE REQUIRED FOR YOUR OWN VEHICLE. **IF YOU DO NOT CHOOSE A GREATER OR LESSER LIMIT FOR UNINSURED MOTORIST (BODILY INJURY AND PROPERTY DAMAGE) AND/OR UNDERINSURED MOTORIST COVERAGE (BODILY INJURY), THEN THE LIMITS FOR EACH TYPE OF COVERAGE IN YOUR POLICY WILL BE THE SAME AS THE HIGHEST LIMITS FOR THAT TYPE OF COVERAGE FOR ANY ONE OF YOUR OWN VEHICLES INSURED UNDER YOUR POLICY.** IF YOU WISH TO PURCHASE UNINSURED MOTORIST AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE AT DIFFERENT LIMITS THAN THE LIMITS FOR YOUR OWN VEHICLE INSURED UNDER THE POLICY, THEN YOU SHOULD ~~THIS INSURANCE PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES CAUSED BY THE NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU SHOULD~~ CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING ~~THIS ADDITIONAL COVERAGE.~~ DIFFERENT COVERAGE LIMITS. YOU SHOULD ALSO READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED UNDER UNINSURED AND UNDERINSURED MOTORIST COVERAGES."

(n) Nothing in this section shall be construed to provide greater amounts of uninsured or underinsured motorist coverage in a liability policy than the insured has purchased from the insurer under this section.

(o) An insurer that fails to comply with subsection (m) of this section is subject to a civil penalty under G.S. 58-2-70."

SECTION 2. This act becomes effective October 1, 2009, and applies to motor vehicle liability insurance policies issued or renewed on or after that date.

SENATE BILL 749: Revise UM/UIM Liability Coverage Requirements

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	August 4, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to Third Edition S749-CSRC-63		

SUMMARY: ***Senate Bill 749 makes changes to uninsured and underinsured motorist coverages to provide that uninsured motorist (UM) coverage may be purchased at limits less than bodily injury liability coverage for any one vehicle insured under the policy, but may not be less than the minimum liability limits for bodily injury and property damage required under law. Underinsured motorist (UIM) coverage may also be purchased at limits less than liability coverage, but the coverage must exceed the minimum bodily injury liability limits required by law and must equal the limits of uninsured motorist bodily injury coverage purchased by the insured.***

The PCS adds language requiring the insurer to notify the insured upon issuance and renewal that the "default" coverage limit for UM and UM/UIM will be the same limits as the limits of uninsured and underinsured bodily injury liability coverage purchased by the insured unless the insured elects to have a different level of coverage. The PCS also moves the effective date to February 1, 2010.

CURRENT LAW: In 2008, S.L. 2008-124 (House Bill 738) was enacted to require motor vehicle liability policies to include uninsured motorist coverage equal to the highest limits of bodily injury liability coverage and property damage liability coverage, and underinsured coverage equal to the highest limits of bodily injury liability coverage, for any for any one vehicle insured under the policy. This provision did not allow insureds the option of purchasing UM/UIM coverage at less than the highest limits under the insured's policy. Prior to this change, UM/UIM coverage could be rejected by an insured in writing.

BILL ANALYSIS: The PCS to Senate Bill 749 makes the following changes in the current law:

- Amends G.S. 20-279.21(b)(3) to retain compulsory UM coverage. However, this coverage may be purchased at greater or lesser amounts than an insured's liability coverage, but the coverage may not be less than the liability limits required under State law. ($30,000 per person/$60,000 per accident/$25,000 property damage)
- Amends G.S. 20-279.21(b)(4) to retain compulsory UM/UIM combined coverage. However, as with UM coverage, UIM coverage may be purchased at lesser or greater amounts, but the coverage must **exceed** the bodily injury liability limits required under State law and must be equal to the limits of uninsured bodily injury liability coverage purchased by the insured. (Only UM coverage is available to an insured who purchases the minimum limits of bodily injury coverage. UIM coverage is not available.)
- Amends G.S. 20-279.21(b)(3) and (4) to clarify that an insurer can rely upon the information provided by an insured as to the number of vehicles on a policy. If the policy contains 5 or more vehicles, it is considered a fleet policy and UM/UIM is not required to be provided.
- Requires the insurer to notify the insured when a policy is issued or renewed that the coverage limits for UM and UM/UIM will be the same as the coverage for bodily injury liability limits unless the insured elects to purchase a different level of coverage.

EFFECTIVE DATE: Senate Bill 749 becomes effective February 1, 2010, and applies to policies issued on or after that date.

Tim Hovis, counsel to Senate Commerce, substantially contributed to this summary.

S749-SMRC-75(CSRC-63) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 749
Commerce Committee Substitute Adopted 5/7/09
House Committee Substitute Favorable 7/6/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S749-PCS55506-RC-63

Short Title: Revise UM/UIM Liability Coverage Requirements. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CLARIFY THE REQUIREMENTS FOR UNINSURED AND UNDERINSURED MOTORIST COVERAGE IN MOTOR VEHICLE LIABILITY INSURANCE POLICIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-279.21 reads as rewritten:

"**§ 20-279.21. "Motor vehicle liability policy" defined.**

(a) A "motor vehicle liability policy" as said term is used in this Article shall mean an owner's or an operator's policy of liability insurance, certified as provided in G.S. 20-279.19 or 20-279.20 as proof of financial responsibility, and issued, except as otherwise provided in G.S. 20-279.20, by an insurance carrier duly authorized to transact business in this State, to or for the benefit of the person named therein as insured.

(b) Such owner's policy of liability insurance:

(1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;

(2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, or any other persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: thirty thousand dollars ($30,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, sixty thousand dollars ($60,000) because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident; and

(3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided

therein or supplemental thereto, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom. ~~therefrom, with limits equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy. The named insured may purchase uninsured motorist bodily injury coverage with greater limits, subject to the limitation that in no event shall uninsured motorist bodily injury coverage limits exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident.~~ The limits of such uninsured motorist bodily injury coverage shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy; provided, however, that (i) the limits shall not exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident regardless of whether the highest limits of bodily injury liability coverage for any one vehicle insured under the policy exceed those limits and (ii) a named insured may purchase greater or lesser limits, except that the limits shall not be less than the bodily injury liability limits required pursuant to subdivision (2) of this subsection, and in no event shall an insurer be required by this subdivision to sell uninsured motorist bodily injury coverage at limits that exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident. ~~The~~ When the policy is issued and renewed, the insurer shall notify the named insured as provided in subsection (m) of this section. ~~of his or her right to purchase uninsured motorist bodily injury coverage with greater limits, when the policy is issued and renewed, as provided in subsection (m) of this section.~~ The provisions shall include coverage for the protection of persons insured ~~thereunder~~ under the policy who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured. ~~insured, with a limit in the aggregate for all insureds in any one accident equal to the highest limits of property damage liability coverage for any one vehicle insured in the owner's policy of liability insurance, and~~ The limits of such uninsured motorist property damage coverage shall be equal to the highest limits of property damage liability coverage for any one vehicle insured under the policy; provided, however, that (i) the limits shall not exceed one million dollars ($1,000,000) per accident regardless of whether the highest limits of property damage liability coverage for any one vehicle insured under the policy exceed those limits and (ii) a named insured may purchase lesser limits, except that the limits shall not be less than the property damage liability limits required pursuant to subdivision (2) of this subsection. When the policy is issued and renewed, the insurer shall notify the named insured as provided in subsection (m) of this section. For uninsured motorist property damage coverage, the limits purchased by the named insured shall be subject, for each insured, to an exclusion of the first one hundred dollars ($100.00) of such damages. The provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that the other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a prima

facie presumption that the operator of the other motor vehicle was uninsured at the time of the accident with the insured for the purposes of recovery under this provision of the insured's liability insurance policy.

If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of a policy that insures more than one motor vehicle, that person shall not be permitted to combine the uninsured motorist limit applicable to any one motor vehicle with the uninsured motorist limit applicable to any other motor vehicle to determine the total amount of uninsured motorist coverage available to that person. If a person who is legally entitled to recover damages from the owner or operator of an uninsured motor vehicle is an insured under the uninsured motorist coverage of more than one policy, that person may combine the highest applicable uninsured motorist limit available under each policy to determine the total amount of uninsured motorist coverage available to that person. The previous sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-10(1) and (2).

In addition to the above requirements relating to uninsured motorist insurance, every policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle, which policy is delivered or issued for delivery in this State, shall be subject to the following provisions which need not be contained therein.

a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner provided by law; provided however, that the determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether the pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law. The failure to post notice to the insurer 60 days in advance of the initiation of suit shall not be grounds for dismissal of the action, but shall automatically extend the time for the filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

b. Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer: Provided, in that event, the insured, or someone in his behalf, shall report the accident within 24 hours or as soon thereafter as may be practicable, to a police officer, peace officer, other judicial officer, or to the Commissioner of Motor Vehicles. The insured shall also within a reasonable time give notice to the insurer of his injury, the extent thereof, and shall set forth in the notice the time, date and place of the injury. Thereafter, on forms to be mailed by the insurer within 15 days following receipt of the notice of the accident to the insurer, the insured shall furnish to insurer any further reasonable information concerning the accident and the injury that the insurer requests. If the forms are not furnished within 15 days, the insured is deemed to have complied with the requirements for furnishing information to the insurer. Suit may not be instituted against the insurer in less than 60 days from the posting of the first notice of the injury or accident to the insurer at the address shown on the policy or after personal delivery of the notice to the insurer or its agent. The failure to post notice to the insurer 60 days before the initiation of the suit shall not be grounds for dismissal of the action, but shall automatically extend the time for filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

Provided under this section the term "uninsured motor vehicle" shall include, but not be limited to, an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability within the limits specified therein because of insolvency.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of coverage, the insurer making payment shall, to the extent thereof, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of that person against any person or organization legally responsible for the bodily injury for which the payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is that insurance but the insurance company writing the insurance denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of the bodily injury and property damage liability insurance, or the owner of the motor vehicle has not

qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

a. A motor vehicle owned by the named insured;

b. A motor vehicle that is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;

c. A motor vehicle that is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);

d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or

e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

For purposes of this section "persons insured" means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal representative of any of the above or any other person or persons in lawful possession of the motor vehicle.

Notwithstanding the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide uninsured motorist coverage. When determining whether a policy is applicable solely to fleet vehicles, the insurer may rely upon the number of vehicles reported by the insured at the time of the issuance of the policy for the policy term in question. In the event of a renewal of the policy, when determining whether a policy is applicable solely to fleet vehicles, the insurer may rely upon the number of vehicles reported by the insured at the time of the renewal of the policy for the policy term in question. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide uninsured motorist coverage in accordance with the provisions of this subsection in amounts equal to the highest limits of bodily injury and property damage liability coverage for any one noncommercial motor vehicle insured under the policy, subject to the right of the insured to purchase ~~higher~~ greater or lesser uninsured motorist bodily injury ~~liability~~ coverage limits and lesser uninsured motorist property damage coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, noncommercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection.

(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this subsection. ~~section, with limits equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy. The~~

~~named insured may purchase underinsured motorist coverage with greater limits, subject to the limitation that in no event shall the underinsured motorist coverage limits exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident.~~ The limits of such underinsured motorist bodily injury coverage shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy; provided, however, that (i) the limits shall not exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident regardless of whether the highest limits of bodily injury liability coverage for any one vehicle insured under the policy exceed those limits, (ii) a named insured may purchase greater or lesser limits, except that the limits shall exceed the bodily injury liability limits required pursuant to subdivision (2) of this subsection, and in no event shall an insurer be required by this subdivision to sell underinsured motorist bodily injury coverage at limits that exceed one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident, and (iii) the limits shall be equal to the limits of uninsured motorist bodily injury coverage purchased pursuant to subdivision (3) of this subsection. When the policy is issued and renewed, the ~~The~~ insurer shall notify the named insured as provided in subsection (m) of this section. ~~his or her right to purchase underinsured motorist coverage with greater limits, when the policy is issued and renewed, as provided in subsection (m) of this section.~~ An "uninsured motor vehicle," as described in subdivision (3) of this subsection, includes an "underinsured highway vehicle," which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. For purposes of an underinsured motorist claim asserted by a person injured in an accident where more than one person is injured, a highway vehicle will also be an "underinsured highway vehicle" if the total amount actually paid to that person under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of underinsured motorist coverage for the vehicle involved in the accident and insured under the owner's policy. Notwithstanding the immediately preceding sentence, a highway vehicle shall not be an "underinsured motor vehicle" for purposes of an underinsured motorist claim under an owner's policy insuring that vehicle unless the owner's policy insuring that vehicle provides underinsured motorist coverage with limits that are greater than that policy's bodily injury liability limits. For the purposes of this subdivision, the term "highway vehicle" means a land motor vehicle or trailer other than (i) a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle while located for use as a residence or premises. The provisions of subdivision (3) of this subsection shall apply to the coverage required by this subdivision. Underinsured motorist coverage is deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of that liability coverage for the purpose of any single

liability claim presented for underinsured motorist coverage is deemed to occur when either (a) the limits of liability per claim have been paid upon the claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid. Underinsured motorist coverage is deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant under the exhausted liability policy.

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant under the exhausted liability policy or policies and the limit of underinsured motorist coverage applicable to the motor vehicle involved in the accident. Furthermore, if a claimant is an insured under the underinsured motorist coverage on separate or additional policies, the limit of underinsured motorist coverage applicable to the claimant is the difference between the amount paid to the claimant under the exhausted liability policy or policies and the total limits of the claimant's underinsured motorist coverages as determined by combining the highest limit available under each policy; provided that this sentence shall apply only to insurance on nonfleet private passenger motor vehicles as described in G.S. 58-40-15(9) and (10). The underinsured motorist limits applicable to any one motor vehicle under a policy shall not be combined with or added to the limits applicable to any other motor vehicle under that policy.

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway vehicle, provided that the amount of the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice before a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of that notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that the insurer be named as a party. Any claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for moneys beyond those paid by the underinsured motorist insurer shall before doing so give notice to the insurer and give the insurer, at its expense, the opportunity to participate

in the prosecution of the claim. Upon the entry of judgment in a suit upon any such claim in which the underinsured motorist insurer and claimant are joined, payment upon the judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in the action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in the action on his separate behalf. If an underinsured motorist insurer, following the approval of the application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, the insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to the owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

As consideration for payment of policy limits by a liability insurer on behalf of the owner, operator, or maintainer of an underinsured motor vehicle, a party injured by an underinsured motor vehicle may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the vehicle any judgment that exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available underinsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing underinsured motorist coverage from pursuing any right of subrogation.

Notwithstanding the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide underinsured motorist coverage. <u>When determining whether a policy is applicable solely to fleet vehicles, the insurer may rely</u>

upon the number of vehicles reported by the insured at the time of the issuance of the policy for the policy term in question. In the event of a renewal of the policy, when determining whether a policy is applicable solely to fleet vehicles, the insurer may rely upon the number of vehicles reported by the insured at the time of the renewal of the policy for the policy term in question. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide underinsured motorist coverage in accordance with the provisions of this subsection in an amount equal to the highest limits of bodily injury liability coverage for any one noncommercial motor vehicle insured under the policy, subject to the right of the insured to purchase ~~higher~~ greater or lesser underinsured motorist bodily injury liability coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, noncommercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection.

(c) Such operator's policy of liability insurance shall insure the person named as insured therein against loss from the liability imposed upon him by law for damages arising out of the use by him of any motor vehicle not owned by him, and within 30 days following the date of its delivery to him of any motor vehicle owned by him, within the same territorial limits and subject to the same limits of liability as are set forth above with respect to an owner's policy of liability insurance.

(d) Such motor vehicle liability policy shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period and the limits of liability, and shall contain an agreement or be endorsed that insurance is provided thereunder in accordance with the coverage defined in this Article as respects bodily injury and death or property damage, or both, and is subject to all the provisions of this Article.

(e) Uninsured or underinsured motorist coverage that is provided as part of a motor vehicle liability policy shall insure that portion of a loss uncompensated by any workers' compensation law and the amount of an employer's lien determined pursuant to G.S. 97-10.2(h) or (j). In no event shall this subsection be construed to require that coverage exceed the applicable uninsured or underinsured coverage limits of the motor vehicle policy or allow a recovery for damages already paid by workers' compensation. The policy need not insure a loss from any liability for damage to property owned by, rented to, in charge of or transported by the insured.

(f) Every motor vehicle liability policy shall be subject to the following provisions which need not be contained therein:

(1) Except as hereinafter provided, the liability of the insurance carrier with respect to the insurance required by this Article shall become absolute whenever injury or damage covered by said motor vehicle liability policy occurs; said policy may not be canceled or annulled as to such liability by any agreement between the insurance carrier and the insured after the occurrence of the injury or damage; no statement made by the insured or on his behalf and no violation of said policy shall defeat or void said policy. As to policies issued to insureds in this State under the assigned risk plan or through the North Carolina Motor Vehicle Reinsurance Facility, a default judgment taken against such an insured shall not be used as a basis for obtaining judgment against the insurer unless counsel for the plaintiff has forwarded to the insurer, or to one of its agents, by registered or certified mail with return receipt requested, or served by any other method of service

provided by law, a copy of summons, complaint, or other pleadings, filed in the action. The return receipt shall, upon its return to plaintiff's counsel, be filed with the clerk of court wherein the action is pending against the insured and shall be admissible in evidence as proof of notice to the insurer. The refusal of insurer or its agent to accept delivery of the registered mail, as provided in this section, shall not affect the validity of such notice and any insurer or agent of an insurer refusing to accept such registered mail shall be charged with the knowledge of the contents of such notice. When notice has been sent to an agent of the insurer such notice shall be notice to the insurer. The word "agent" as used in this subsection shall include, but shall not be limited to, any person designated by the insurer as its agent for the service of process, any person duly licensed by the insurer in the State as insurance agent, any general agent of the company in the State of North Carolina, and any employee of the company in a managerial or other responsible position, or the North Carolina Commissioner of Insurance; provided, where the return receipt is signed by an employee of the insurer or an employee of an agent for the insurer, shall be deemed for the purposes of this subsection to have been received. The term "agent" as used in this subsection shall not include a producer of record or broker, who forwards an application for insurance to the North Carolina Motor Vehicle Reinsurance Facility.

The insurer, upon receipt of summons, complaint or other process, shall be entitled, upon its motion, to intervene in the suit against its insured as a party defendant and to defend the same in the name of its insured. In the event of such intervention by an insurer it shall become a named party defendant. The insurer shall have 30 days from the signing of the return receipt acknowledging receipt of the summons, complaint or other pleading in which to file a motion to intervene, along with any responsive pleading, whether verified or not, which it may deem necessary to protect its interest: Provided, the court having jurisdiction over the matter may, upon motion duly made, extend the time for the filing of responsive pleading or continue the trial of the matter for the purpose of affording the insurer a reasonable time in which to file responsive pleading or defend the action. If, after receiving copy of the summons, complaint or other pleading, the insurer elects not to defend the action, if coverage is in fact provided by the policy, the insurer shall be bound to the extent of its policy limits to the judgment taken by default against the insured, and noncooperation of the insured shall not be a defense.

If the plaintiff initiating an action against the insured has complied with the provisions of this subsection, then, in such event, the insurer may not cancel or annul the policy as to such liability and the defense of noncooperation shall not be available to the insurer: Provided, however, nothing in this section shall be construed as depriving an insurer of its defenses that the policy was not in force at the time in question, that the operator was not an "insured" under policy provisions, or that the policy had been lawfully canceled at the time of the accident giving rise to the cause of action.

Provided further that the provisions of this subdivision shall not apply when the insured has delivered a copy of the summons, complaint or other pleadings served on him to his insurance carrier within the time provided by law for filing answer, demurrer or other pleadings.

(2) The satisfaction by the insured of a judgment for such injury or damage shall not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage;

(3) The insurance carrier shall have the right to settle any claim covered by the policy, and if such settlement is made in good faith, the amount thereof shall be deductible from the limits of liability specified in subdivision (2) of subsection (b) of this section;

(4) The policy, the written application therefor, if any, and any rider or endorsement which does not conflict with the provisions of the Article shall constitute the entire contract between the parties.

(g) Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this Article. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

(h) Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this Article.

(i) Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

(j) The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

(k) Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirements for such a policy.

(l) A party injured by an uninsured motor vehicle covered under a policy in amounts less than those set forth in G.S. 20-279.5, may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the uninsured vehicle any judgment that exceeds the liability policy limits, as consideration for payment of any applicable policy limits by the insurer where judgment exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available uninsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing uninsured motorist coverage from pursuing any right of subrogation.

(m) Every insurer that sells motor vehicle liability policies subject to the requirements of subdivisions (b)(3) and (b)(4) of this section ~~shall~~ shall, when issuing and renewing a policy, give reasonable notice to the named ~~insured, when the policy is issued and renewed,~~ insured of all of the following:

(1) The named insured is required to purchase uninsured motorist bodily injury coverage, uninsured motorist property damage coverage, and, if applicable, underinsured motorist bodily injury coverage.

(2) The named insured's uninsured motorist bodily injury coverage limits shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy unless the insured elects to purchase greater or lesser limits for uninsured motorist bodily injury coverage.

(3) The named insured's uninsured motorist property damage coverage limits shall be equal to the highest limits of property damage liability coverage for any one vehicle insured under the policy unless the insured elects to purchase lesser limits for uninsured motorist property damage coverage.

(4) The named insured's underinsured motorist bodily injury coverage limits, if applicable, shall be equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy unless the insured

elects to purchase greater or lesser limits for underinsured motorist bodily injury coverage.

(5) ~~that the~~ The named insured may purchase uninsured motorist bodily injury coverage and, if applicable, underinsured motorist coverage with limits up to one million dollars ($1,000,000) per person and one million dollars ($1,000,000) per accident.

An insurer shall be deemed to have given reasonable notice if it includes the following or substantially similar language on the policy's original and renewal declarations pages or in a separate notice accompanying the original and renewal declarations pages in at least ~~10~~ 12 point type:

"NOTICE: YOU ARE REQUIRED TO PURCHASE UNINSURED MOTORIST BODILY INJURY COVERAGE, UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE AND, IN SOME CASES, UNDERINSURED MOTORIST BODILY INJURY COVERAGE. THIS INSURANCE PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES AND PROPERTY DAMAGE CAUSED BY THE NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY COVERAGE AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE WITH LIMITS UP TO ONE MILLION DOLLARS ($1,000,000) PER PERSON AND ONE MILLION DOLLARS ($1,000,000) PER ~~ACCIDENT.~~ ACCIDENT OR AT SUCH LESSER LIMITS YOU CHOOSE. YOU CANNOT PURCHASE COVERAGE FOR LESS THAN THE MINIMUM LIMITS FOR THE BODILY INJURY AND PROPERTY DAMAGE COVERAGE THAT ARE REQUIRED FOR YOUR OWN VEHICLE. IF YOU DO NOT CHOOSE A GREATER OR LESSER LIMIT FOR UNINSURED MOTORIST BODILY INJURY COVERAGE, A LESSER LIMIT FOR UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE, AND/OR A GREATER OR LESSER LIMIT FOR UNDERINSURED MOTORIST BODILY INJURY COVERAGE, THEN THE LIMITS FOR THE UNINSURED MOTORIST BODILY INJURY COVERAGE AND, IF APPLICABLE, THE UNDERINSURED MOTORIST BODILY INJURY COVERAGE WILL BE THE SAME AS THE HIGHEST LIMITS FOR BODILY INJURY LIABILITY COVERAGE FOR ANY ONE OF YOUR OWN VEHICLES INSURED UNDER THE POLICY AND THE LIMITS FOR THE UNINSURED MOTORIST PROPERTY DAMAGE COVERAGE WILL BE THE SAME AS THE HIGHEST LIMITS FOR PROPERTY DAMAGE LIABILITY COVERAGE FOR ANY ONE OF YOUR OWN VEHICLES INSURED UNDER THE POLICY. IF YOU WISH TO PURCHASE UNINSURED MOTORIST AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE AT DIFFERENT LIMITS THAN THE LIMITS FOR YOUR OWN VEHICLE INSURED UNDER THE POLICY, THEN YOU SHOULD ~~THIS INSURANCE PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES CAUSED BY THE NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU SHOULD~~ CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR OPTIONS FOR OBTAINING ~~THIS ADDITIONAL COVERAGE.~~ DIFFERENT COVERAGE LIMITS. YOU SHOULD ALSO READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED UNDER UNINSURED AND UNDERINSURED MOTORIST COVERAGES."

(n) Nothing in this section shall be construed to provide greater amounts of uninsured or underinsured motorist coverage in a liability policy than the insured has purchased from the insurer under this section.

(o) An insurer that fails to comply with subsection (m) of this section is subject to a civil penalty under G.S. 58-2-70."

SECTION 2. This act becomes effective February 1, 2010, and applies to motor vehicle liability insurance policies issued or renewed on or after that date.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/ BROADBAND CONNECTIVITY.

☒ House Committee Substitute # 1 for
SB 749 A BILL TO BE ENTITLED AN ACT TO REVISE AND CLARIFY THE REQUIREMENTS FOR UNINSURED AND UNDERINSURED MOTORIST COVERAGE IN MOTOR VEHICLE LIABILITY INSURANCE POLICIES.

☒ With a favorable report as to House committee substitute bill 2, unfavorable as to House committee substitute bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 293

Short Title:	Juror Qualifications/Electronic Juror List.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE QUALIFICATIONS FOR PROSPECTIVE JURORS AND TO AUTHORIZE THE REGISTER OF DEEDS TO STORE AN ELECTRONIC COPY OF THE JUROR MASTER LIST.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-3 reads as rewritten:

"**§ 9-3. Qualifications of prospective jurors.**

All persons are qualified to serve as jurors and to be included on the jury list who are citizens of the State and residents of the county, who have not served as jurors during the preceding two years, who are 18 years of age or over, who are physically and mentally competent, who can ~~hear and~~ understand the English language, who have not been convicted of a felony or pleaded guilty or nolo contendere to an indictment charging a felony (or if convicted of a felony or having pleaded guilty or nolo contendere to an indictment charging a felony have had their citizenship restored pursuant to law), and who have not been adjudged non compos mentis. Persons not qualified under this section are subject to challenge for cause."

SECTION 2. G.S. 9-4 reads as rewritten:

"**§ 9-4. Preparation and custody of list.**

As the jury list is prepared, the name and address of each qualified person selected for the list shall be written on a separate card. The cards shall then be alphabetized and permanently numbered, the numbers running consecutively with a different number on each card. These cards shall constitute the jury list for the county. They shall be filed with the register of deeds of the county, together with a statement of the sources used and procedures followed in preparing the list. The list shall be kept under lock and key, but shall be available for public inspection during regular office hours. The register of deeds may elect to store an electronic copy of the jury list for the county."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 293
Judiciary I Committee Substitute Adopted 4/1/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S293-CSSA-69 [v.1]

7/29/2009 12:47:40 PM

Short Title: Juror Qualifications/Electronic Juror List. (Public)

Sponsors:

Referred to:

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE QUALIFICATIONS FOR PROSPECTIVE JURORS, TO AUTHORIZE THE REGISTER OF DEEDS TO STORE AN ELECTRONIC COPY OF THE JUROR MASTER LIST, AND TO ALLOW A CHALLENGE FOR CAUSE BASED ON A JUROR BEING DEAF AND TO REQUIRE THAT CHALLENGE BE GRANTED.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 9-3 reads as rewritten:

"**§ 9-3. Qualifications of prospective jurors.**

All persons are qualified to serve as jurors and to be included on the jury list who are citizens of the State and residents of the county, who have not served as jurors during the preceding two years, who are 18 years of age or over, who are physically and mentally competent, who can ~~hear and~~ understand the English language, who have not been convicted of a felony or pleaded guilty or nolo contendere to an indictment charging a felony (or if convicted of a felony or having pleaded guilty or nolo contendere to an indictment charging a felony have had their citizenship restored pursuant to law), and who have not been adjudged non compos mentis. Persons not qualified under this section are subject to challenge for cause."

SECTION 1.(b) G.S. 8B-2 is amended by adding a new subsection to read:

"(c1) When a deaf person is selected as a juror in any proceeding in any superior or district court of the State or as a grand juror, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person. A deaf juror shall be entitled to have the appointed qualified interpreter be present during all jury proceedings and deliberations in order to interpret for the deaf person. The appointed qualified interpreter shall be subject to the same duties, confidentiality, and other restrictions as imposed by the judge on the member of the jury."

SECTION 2. G.S. 9-4 reads as rewritten:

"**§ 9-4. Preparation and custody of list.**

As the jury list is prepared, the name and address of each qualified person selected for the list shall be written on a separate card. The cards shall then be alphabetized and permanently numbered, the numbers running consecutively with a different number on each card. These cards shall constitute the jury list for the county. They shall be filed with the register of deeds of the county, together with a statement of the sources used and procedures followed in preparing the list. The list shall be kept under lock and key, but shall be available for public

inspection during regular office hours. The register of deeds may elect to store an electronic copy of the jury list for the county."

SECTION 3. G.S. 9-15(c) reads as rewritten:

"(c) In civil cases if any juror (i) has a suit pending and at issue in the court in which he is serving, ~~he~~ the juror may be challenged for cause, and ~~he~~ the juror shall be withdrawn from the trial panel, and may be withdrawn from the venire in the discretion of the presiding ~~judge.~~judge, or (ii) is deaf, the juror may be challenged for cause, and the juror shall be withdrawn from the trial panel by the presiding judge. In criminal cases challenges are governed by Article 72, Selecting and Impaneling the Jury, of Chapter 15A of the General Statutes."

SECTION 4. G.S. 15A-1212 reads as rewritten:

"§ 15A-1212. Grounds for challenge for cause.

(a) A challenge for cause to an individual juror may be made by any party on the ground that the juror:

(1) Does not have the qualifications required by G.S. 9-3.

(2) Is incapable by reason of mental or physical infirmity of rendering jury service.

(3) Has been or is a party, a witness, a grand juror, a trial juror, or otherwise has participated in civil or criminal proceedings involving a transaction which relates to the charge against the defendant.

(4) Has been or is a party adverse to the defendant in a civil action, or has complained against or been accused by him in a criminal prosecution.

(5) Is related by blood or marriage within the sixth degree to the defendant or the victim of the crime.

(6) Has formed or expressed an opinion as to the guilt or innocence of the defendant. It is improper for a party to elicit whether the opinion formed is favorable or adverse to the defendant.

(7) Is presently charged with a felony.

(8) As a matter of conscience, regardless of the facts and circumstances, would be unable to render a verdict with respect to the charge in accordance with the law of North Carolina.

(9) For any other cause is unable to render a fair and impartial verdict.

(b) A challenge for cause to an individual juror may be made by any party on the ground that the juror is deaf. The court shall grant any challenge based on this ground, and the juror shall be withdrawn from the trial panel."

SECTION 5. Section 1 of this act becomes effective October 1, 2009, and the remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 293

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

S293-ASA-42 [v.1]

Comm. Sub. [YES]
Amends Title [YES]
S293-CSSA-69

Date _____,2009

Representative Bryant

moves to amend the bill on page 1, line 5
by rewriting that line to read:
"ON A JUROR BEING INCAPABLE TO SERVE DUE TO A MENTAL OR PHYSICAL DISABILITY."

And on page 2, lines 3 – 35
By rewriting those lines to read:

" **SECTION 3.** G.S. 9-15(c) reads as rewritten:

'(c) In civil cases if any juror has a suit pending and at issue in the court in which ~~he~~ the juror is serving, ~~he~~ the juror may be challenged for cause, and ~~he~~ the juror shall be withdrawn from the trial panel, and may be withdrawn from the venire in the discretion of the presiding judge. A challenge for cause to an individual juror may be made by any party on the ground that the juror is incapable by reason of mental or physical disability of rendering jury service. In criminal cases challenges are governed by Article 72, Selecting and Impaneling the Jury, of Chapter 15A of the General Statutes.'

SECTION 4. G.S. 15A-1212 reads as rewritten:

'§ 15A-1212. Grounds for challenge for cause.

A challenge for cause to an individual juror may be made by any party on the ground that the juror:

(1) Does not have the qualifications required by G.S. 9-3.
(2) Is incapable by reason of mental or physical ~~infirmity~~ disability of rendering jury service.
(3) Has been or is a party, a witness, a grand juror, a trial juror, or otherwise has participated in civil or criminal proceedings involving a transaction which relates to the charge against the defendant.
(4) Has been or is a party adverse to the defendant in a civil action, or has complained against or been accused by him in a criminal prosecution.
(5) Is related by blood or marriage within the sixth degree to the defendant or the victim of the crime.
(6) Has formed or expressed an opinion as to the guilt or innocence of the defendant. It is improper for a party to elicit whether the opinion formed is favorable or adverse to the defendant.
(7) Is presently charged with a felony.

(8) As a matter of conscience, regardless of the facts and circumstances, would be unable to render a verdict with respect to the charge in accordance with the law of North Carolina.

(9) For any other cause is unable to render a fair and impartial verdict.'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 293

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

S293-ASA-39 [v.2]

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

Date _____,2009

Representative Alexander

moves to amend the bill on page 1, line 4
by deleting "AND"

and on page 1, line 5
by rewriting the line to read:
"ON A JUROR BEING DEAF AND TO REQUIRE THAT CHALLENGE BE GRANTED, AND TO ALLOW DEAF PERSONS SUMMONED AS JURORS TO REQUEST EXEMPTION WITHOUT APPEARANCE."

And on page 2, lines 35-36
By inserting between those lines the following:
"**SECTION 5.** G.S. 9-6.1 reads as rewritten:
'**§ 9-6.1. Requests to be excused.**
Any person summoned as a juror who is 72 years or ~~older~~ older, or who is deaf, 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 the request with the chief district court judge of that district, or the district court judge or trial court administrator designated by the chief district court judge pursuant to G.S. 9-6(b), at anytime five days before the date upon which 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, notice may be given when summoned. In case the chief district court judge, or the judge or trial court administrator designated by the chief district court judge pursuant to G.S. 9-6(b), 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.'"

And on page 2, line 36
By deleting "**SECTION 5.**" And inserting "**SECTION 6.**"

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 293

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

S293-ASA-39 [v.2]

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 _____

S. B. No. 293 Amendment No. _____
(to be filled in by Principal Clerk)

~~COMMITTEE SUBSTITUTE~~ S293-ASA-39

(Rep.) Sen.) Stevens

amendment
moves to amend the ~~bill~~ on page 1, line 14

( ) WHICH CHANGES THE TITLE

by rewriting that line to read:

"Any person summoned as a juror who is 72 years or ~~older~~ older, or is a person with a disability ~~that~~ that would interfere with ~~their~~ the person's ability to serve as a juror;

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

MINUTES

House Ways and Means / Broadband Connectivity Committee

Wednesday August 5, 2009
House Chamber

The House Ways and Means/Broadband Connectivity Committee met on Wednesday, August 8 at 6:15 p.m. in the House Chamber around Representative Faison's desk. The following members were present: Representative Faison, Chair; Representatives Tillis, Alexander K., Bryant, Gully, Haire, Hilton, Stevens and Wilkins.

The only order of business was SB 293 Juror Qualifications/Electronic Juror List. Representative Faison moved that the proposed committee substitute be before the committee. Hearing no objection, Representative Faison provided a brief explanation of the bill. Representative Stevens was recognized for a motion to give a favorable report to the House committee substitute, and an unfavorable report to the original bill. Representative Haire was recognized to amend the motion to give a favorable report to the House committee substitute, and report the original bill without prejudice. All were in favor and the motion carried.

The committee adjourned at 6:20 p.m.

Due to a procedural error, the meeting was called back to order at 6:30 p.m. by Representative Coates, Vice-Chair in the 1200 courtyard of the Legislative Building. The following Members were present: Representative Coates, Vice-Chair; Representatives Tolson, Stevens, Gillespie, Hilton, Alexander, K. and Gully.

Representative Hilton, having voted on the prevailing side, was recognized for a motion to reconsider the bill. All were in favor. Representative Coates, Vice-Chair, recognized Representative Tolson to send forth an amendment which changed the original bill on page 1, lines 2-35. All were in favor and the amendment was adopted. Representative Coates then recognized Representative Tolson for a motion for a favorable report to the House committee substitute and an unfavorable report to the original bill as amended. All were in favor and the motion carried.

The committee adjourned at 6:40 p.m.

Representative Faison, Vice-Chair



Dianne Russell, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 293
Judiciary I Committee Substitute Adopted 4/1/09

Short Title: Juror Qualifications/Electronic Juror List. (Public)

Sponsors:

Referred to:

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE QUALIFICATIONS FOR PROSPECTIVE JURORS AND TO AUTHORIZE THE REGISTER OF DEEDS TO STORE AN ELECTRONIC COPY OF THE JUROR MASTER LIST.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 9-3 reads as rewritten:

"**§ 9-3. Qualifications of prospective jurors.**

All persons are qualified to serve as jurors and to be included on the jury list who are citizens of the State and residents of the county, who have not served as jurors during the preceding two years, who are 18 years of age or over, who are physically and mentally competent, who can ~~hear and~~ understand the English language, who have not been convicted of a felony or pleaded guilty or nolo contendere to an indictment charging a felony (or if convicted of a felony or having pleaded guilty or nolo contendere to an indictment charging a felony have had their citizenship restored pursuant to law), and who have not been adjudged non compos mentis. Persons not qualified under this section are subject to challenge for cause."

SECTION 1.(b) G.S. 8B-2 is amended by adding a new subsection to read:

"(c1) When a deaf person is selected as a juror in any proceeding in any superior or district court of the State or as a grand juror, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person. A deaf juror shall be entitled to have the appointed qualified interpreter be present during all jury proceedings and deliberations in order to interpret for the deaf person. The appointed qualified interpreter shall be subject to the same duties, confidentiality, and other restrictions as imposed by the judge on the member of the jury."

SECTION 2. G.S. 9-4 reads as rewritten:

"**§ 9-4. Preparation and custody of list.**

As the jury list is prepared, the name and address of each qualified person selected for the list shall be written on a separate card. The cards shall then be alphabetized and permanently numbered, the numbers running consecutively with a different number on each card. These cards shall constitute the jury list for the county. They shall be filed with the register of deeds of the county, together with a statement of the sources used and procedures followed in preparing the list. The list shall be kept under lock and key, but shall be available for public inspection during regular office hours. The register of deeds may elect to store an electronic copy of the jury list for the county."

SECTION 3. Section 1 of this act becomes effective October 1, 2009, and the remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 293

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

S293-ASA-43 [v.1]

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

Date _____,2009

Representative Tolson

moves to amend the bill on page 1, lines 2-35
by rewriting those lines to read"
"AN ACT TO AUTHORIZE THE REGISTER OF DEEDS TO STORE AN ELECTRONIC COPY OF THE JUROR MASTER LIST.
The General Assembly of North Carolina enacts:
SECTION 1. G.S. 9-4 reads as rewritten:
'**§ 9-4. Preparation and custody of list.**
As the jury list is prepared, the name and address of each qualified person selected for the list shall be written on a separate card. The cards shall then be alphabetized and permanently numbered, the numbers running consecutively with a different number on each card. These cards shall constitute the jury list for the county. They shall be filed with the register of deeds of the county, together with a statement of the sources used and procedures followed in preparing the list. The list shall be kept under lock and key, but shall be available for public inspection during regular office hours. The register of deeds may elect to store an electronic copy of the jury list for the county.'
SECTION 2. This act is effective when it becomes law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 293
Judiciary I Committee Substitute Adopted 4/1/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S293-PCS15330-SA-72

Short Title: Juror Qualifications/Electronic Juror List. (Public)

Sponsors:

Referred to:

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE REGISTER OF DEEDS TO STORE AN ELECTRONIC COPY OF THE JUROR MASTER LIST.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-4 reads as rewritten:

"**§ 9-4. Preparation and custody of list.**

As the jury list is prepared, the name and address of each qualified person selected for the list shall be written on a separate card. The cards shall then be alphabetized and permanently numbered, the numbers running consecutively with a different number on each card. These cards shall constitute the jury list for the county. They shall be filed with the register of deeds of the county, together with a statement of the sources used and procedures followed in preparing the list. The list shall be kept under lock and key, but shall be available for public inspection during regular office hours. The register of deeds may elect to store an electronic copy of the jury list for the county."

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 293 A BILL TO BE ENTITLED AN ACT TO AMEND THE QUALIFICATIONS FOR PROSPECTIVE JURORS AND TO AUTHORIZE THE REGISTER OF DEEDS TO STORE AN ELECTRONIC COPY OF THE JUROR MASTER LIST.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill as amended.

(FOR JOURNAL USE ONLY)

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

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

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

NORTH CAROLINA GENERAL ASSEMBLY
HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY
2009-2010 SESSION



Rep. Bill Faison
Chairman



Rep. Lorene Coates
Vice Chair



Rep. Thom Tillis
Vice Chair



Rep. Kelly Alexander



Rep. John May
Appointed 04/21/2010



Rep. Angela Bryant



Rep. Mitch Gillespie



Rep. Jim Gulley



Rep. Phil Haire



Rep. Dewey Hill



Rep. Mark Hilton



Rep. Sara Stevens



Rep. Joe Tolson



Rep. Winkie Wilkins

HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY ATTENDANCE

(Name of Committee)

DATES	26 May 10	9 June 10	16 June 10	23 June 10	29 June 10	1 July 10	7 July 10								
Faison, Bill, Chairman	√	√	√	√	√	√	√								
Coates, Lorene, Vice Chair	√	√	√	√	√	X	√								
Tillis, Thom, Vice Chair	X	√	√	√	X	X	√								
Alexander, Kelly	√	√	√	√	√	√	X								
May, John [Appointed 04/21/2010]	X	√	√	X	√	√	X								
Bryant, Angela	X	√	√	X	√	√	X								
Gillespie, Mitch	X	X	√	X	√	X	X								
Gulley, Jim	X	√	√	X	√	X	X								
Haire, Phil	X	√	√	X	√	X	√								
Hill, Dewey	X	X	√	X	X	X	X								
Hilton, Mark	X	√	√	√	√	√	√								
Stevens, Sarah	X	√	√	√	√	√	√								
Tolson, Joe	X	√	√	X	√	X	√								
Wilkins, Winkie	X	X	√	X	√	√	√								
STAFF:															
Carter, Brenda	√	√	√	√	X	X	√								
Seitz, Susan	√	√	√	√	X	√	X								
Hovis, Tim	√	√	√	√	X	X	X								
Capriglione, Peter	√	√	√	√	X	X	X								

2009-2010 Biennium
Leg. Day: H-151/S-148

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0009	Pierce	NO TEXTING WHILE DRIVING.	*HR	Ch. SL 2009-135	02-12-09	04-02-09
0016	Tucker	RETIRED JUDGE MAY PERFORM MARRIAGE.	H	Ref to the Com on Ways & Means / Broadband Connectivity, if favorable, Judiciary III	02-12-09	
H0084	Burr	NO BAIL FOR CERTAIN ILLEGAL ALIENS.	H	Ref to the Com on Ways & Means / Broadband Connectivity, if favorable, Judiciary I, if favorable, Appropriations	02-12-09	
H0096	Faison	LOCAL GOVERNMENT SURPLUS PROPERTY DONATIONS.	*HR	Ch. SL 2009-141	02-12-09	03-05-09
H0135	Faison	BROADBAND SERVICE PROVIDERS.	*HR	Ch. SL 2009-80	02-12-09	03-19-09
H0136	Faison	DOT/FIBER-OPTIC CABLE.	H	Ref To Com On Finance	02-12-09	04-09-09
H0157	Faison	CONTINUE STUDY/RURAL INTERNET ACCESS.	H	Re-ref Com On Rules, Calendar, and Operations of the House	02-16-09	03-12-09
$ H0179=	**Adams**	**ACCESSIBLE ELECTRONIC INFO ACT/BLIND/ DISABLED.**	**H**	**Assigned To Appropriations Subcommittee on Health and Human Services**	**02-18-09**	**03-19-09**
H0247	Gibson	DAS & CLERKS/HANDGUNS IN COURTHOUSE.	H	Ref to the Com on Ways and Means/ Broadband Connectivity, if favorable, Judiciary II	02-23-09	
H0248	Gibson	REVISE EMERGENCY JUDGE QUALIFICATIONS.	H	Ref to the Com on Ways and Means/ Broadband Connectivity, if favorable, Judiciary III	02-23-09	
H0283	K. Alexander	NC BROADBAND TASK FORCE.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	02-25-09	05-11-09
H0291	Parmon	NATURAL HAIR CARE LICENSURE/COSMETIC ART ACT.	*HR	Ch. SL 2009-521	02-25-09	03-26-09
H0309	Glazier	INTERNET TICKET PROTECTION RESALE SUNSET.	HR	Ch. SL 2009-255	02-26-09	03-12-09
H0396	Hilton	RAISE INCOME LIMIT FOR HOMESTEAD	H	Re-ref Com On Finance	03-05-09	03-26-09

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		EXCLUSION.				
H0421	K. Alexander	USE OF DEADLY FORCE/ SBI INVESTIGATIONS.	*H	Re-ref Com On Judiciary III	03-05-09	04-30-09
H0423	Allred	RAISE HOMESTEAD INCOME LIMIT TO 30K.	H	Ref to the Com on Ways and Means/ Broadband Connectivity, if favorable, Finance	03-05-09	
H0463	Goforth	AMEND ANTIQUE FIREARM DEFINITION.	*H	Re-ref Com On Judiciary III	03-09-09	03-19-09
H0472=	Womble	NORTH CAROLINA RACIAL JUSTICE ACT.	*H	Re-ref Com On Judiciary I	03-09-09	04-23-09
H0490=	Tolson	PURCHASING PROCESS FOR COMMUNITY COLLEGES.	*HR	Ch. SL 2009-132	03-23-09	05-07-09
$ H0532	**Tolson**	**E-NC CONNECTIVITY/ ECONOMIC DEVELOPMENT FUNDS.**	***H**	**Re-ref Com On Appropriations**	**03-12-09**	**04-14-09**
H0557	Folwell	FUTURE VOLUNTEER FIREFIGHTERS ACT.	*HR	Ch. SL 2009-21	03-12-09	03-26-09
H0578	Bryant	PARTITION SALES/ COMMRS., SELLERS, BUYERS.	*HR	Ch. SL 2009-512	03-16-09	05-07-09
H0578	Bryant	PARTITION SALES/ COMMRS., SELLERS, BUYERS.	*HR	Ch. SL 2009-512	08-05-09	08-06-09
H0579	Bryant	PARTITION SALES/ BUYOUT, FACTORS, ATTNY FEES.	H	Ref to the Com on Ways and Means/ Broadband Connectivity, if favorable, Judiciary I	03-16-09	
H0580=	Bryant	PARTITION SALES/ NOTICE, CREDIT, APPRAISAL.	H	Ref to the Com on Ways and Means/ Broadband Connectivity, if favorable, Judiciary I	03-16-09	
H0581=	Bryant	PARTITION SALES/ EXTEND REPORT & ANSWER TIMES.	*HR	Ch. SL 2009-362	03-16-09	04-02-09
H0583	Glazier	CLARIFY LOCAL SCHOOL BOARD SOVEREIGN IMMUNITY.	H	Ref to the Com on Ways and Means/ Broadband Connectivity, if favorable, Judiciary II	03-16-09	
H0587	Tarleton	AMEND CEMETERY ACT/ ELIMINATE BOND.	H	Ref to the Com on Ways and Means/ Broadband Connectivity, if favorable, Judiciary II	03-16-09	
H0595	K. Alexander	STUDY HIGH-SPEED INTERNET/UNDERSERVED CITIES.	H	Re-ref Com On Rules, Calendar, and Operations of	03-16-09	04-09-09

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				the House		
0629	Sutton	SMALL CLAIMS COURT/ TRIALS.	*HR	Ch. SL 2009-359	03-30-09	04-16-09
H0630	Sutton	SUMMARY EJECTMENT/ TRIALS.	*HR	Ch. SL 2009-246	03-30-09	04-16-09
H0676	McCormick	LAW ENFORCEMENT JURISDICTION IN IREDELL CO.	HR	Ch. SL 2009-44	03-19-09	04-02-09
H0722	Hilton	PARAPHERNALIA CONTROL ACT.	*HR	Ch. SL 2009-205	03-23-09	04-09-09
$ H0773=	**M. Alexander**	**INCREASE ACCESS TO JUSTICE.**	**H**	**Ref to the Com on Judiciary I, if favorable, Finance, if favorable, Appropriations**	**03-25-09**	**03-31-09**
H0784=	Moore	EXECUTION/PHYSICIAN ASSISTANCE AUTHORIZED.	H	Ref to the Com on Ways and Means/ Broadband Connectivity, if favorable, Health	03-26-09	
H0786=	Faison	OFFICE OF PROSECUTION SERVICES.	H	Re-ref Com On Appropriations	03-26-09	04-09-09
H0787	Justice	INCREASE PENALTY/ REMOVE SERIAL # FROM GUN.	*HR	Ch. SL 2009-204	03-26-09	04-30-09
H0827	Underhill	UNATTENDED CHILDREN IN VEHICLES.	*H	Ref To Com On Judiciary I	04-28-09	05-07-09
$ H0836=	**Tillis**	**MODIFY APPROPRIATIONS ACT.**	***HR**	**Ch. SL 2009-575**	**05-05-09**	**05-11-09**
0885	Ross	TARGETED PICKETING.	*HR	Ch. SL 2009-300	03-31-09	04-16-09
H0937	Glazier	INNOCENCE COMMN./ LIMITED WITNESS IMMUNITY.	*HR	Ch. SL 2009-360	04-14-09	04-23-09
H1037	Glazier	PERMIT ACCESS TO CAPITAL DEFENDANTS.	HR	Ch. SL 2009-91	04-14-09	04-23-09
H1039	Glazier	GUILTY PLEA FORM REVISIONS.	*HR	Ch. SL 2009-86	04-14-09	04-27-09
H1055	Wilkins	MEDICAL RECORDS/ COPYING FEES.	*H	Re-ref Com On Ways and Means/ Broadband Connectivity	05-07-09	
H1076=	Wiley	BLADEN FOX HUNTING.	*H	Ref To Com On Wildlife Resources	04-06-09	04-23-09
H1077=	Wiley	VENUE/MUNICIPALITIES IN MULTIPLE DISTRICTS.	*HR	Ch. SL 2009-398	04-06-09	04-16-09
H1107	Rhyne	ALIMONY AND POST SEPARATION SUPPORT WAIVER.	*H	Re-ref Com On Judiciary II	04-07-09	04-16-09
H1110	Goodwin	CLARIFY/ALIEN. OF AFFECTION/CRIM. CONVERSAT'N.	*HR	Ch. SL 2009-400	04-07-09	04-30-09
H1123	Insko	ABOLISH ALIENATION OF AFFECTION/CRIM. CONV.	H	Ref to the Com on Ways and Means/ Broadband Connectivity, if	04-07-09	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
				favorable, Judiciary I		
1180	Holliman	CONSUMER CHOICE AND INVESTMENT ACT OF 2009.	*HR	Ch. SL 2009-238	04-08-09	05-07-09
H1185	Sutton	HABITUAL DWI-REINSTATEMENT PETITION/10 YRS.	*HR	Ch. SL 2009-369	04-08-09	05-07-09
H1198	Avila	CLARIFICATION/HEARING ON LICENSE RESTORATION.	HR	Ch. SL 2009-99	04-08-09	05-07-09
H1213	Brubaker	AMEND BROADBAND DEFINITION/MORE COMPETITION.	*H	Re-ref Com On Public Utilities	04-08-09	05-11-09
H1255	Holloway	SEX OFFENDERS/ PERMANENT NO CONTACT ORDER.	*HR	Ch. SL 2009-380	04-09-09	04-23-09
H1256	Holloway	LARCENY OF A MOTOR VEHICLE PART.	*HR	Ch. SL 2009-379	04-09-09	05-07-09
H1277	Rapp	BAN SERVER-BASED VIDEO POKER.	H	Ref to the Com on Ways and Means/ Broadband Connectivity, if favorable, Judiciary I	04-09-09	
H1299	Rapp	VIRTUAL VISITATION/ FAMILY LAW.	*HR	Ch. SL 2009-314	04-09-09	05-11-09
H1303	Blust	FALSE REPORT TO LAW ENFORCEMENT.	H	Ref to the Com on Ways and Means/ Broadband Connectivity, if favorable, Judiciary I	04-09-09	
H1307	Sutton	NO FELON AS SHERIFF.	*HR	Ch. SL 2010-49	04-09-09	05-11-09
H1320	Starnes	CELL PHONE USE/ AGGRAVATING FACTOR IN CRASHES.	H	Ref to the Com on Ways and Means/ Broadband Connectivity, if favorable, Judiciary III	04-09-09	
H1326	Glazier	AMEND SECOND DEGREE MURDER.	H	Ref to the Com on Ways and Means/ Broadband Connectivity, if favorable, Judiciary II	04-09-09	
H1332	Stiller	CREATE CRIMINAL OFFENSE OF FELONY AFFRAY.	*H	Re-ref Com On Judiciary III	04-09-09	04-30-09
H1334	Stiller	CREATE CRIMINAL OFFENSE/HOME INVASION.	H	Re-ref Com On Appropriations	04-09-09	04-30-09
H1360	Haire	AMEND HABITUAL OFFENDER LAW.	*H	Re-ref Com On Ways and Means/ Broadband Connectivity	05-12-09	
H1370	Faison	REFORM MEDICAL	H	Ref to the Com on	04-09-09	

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		MALPRACTICE EVIDENTIARY RULES .		Ways and Means/ Broadband Connectivity, if favorable, Judiciary III		
H1390	Mackey	WILLS/BEQUESTS TO DRAFTING ATTORNEY.	*HR	Ch. SL 2009-182	04-13-09	05-07-09
H1398	Goodwin	DETERMINING SENIOR RESIDENT SUP CT JUDGE.	*H	Pres. To Gov. 7/ 10/2010	04-13-09	04-23-09
H1419	Cleveland	BAT PROTECTION ACT.	*HR	Ch. SL 2009-219	05-06-09	05-11-09
H1432	McLawhorn	EXPEDITE CRIM. RECORD CHECKS/CHILD CARE.	H	Ref to the Com on Ways and Means/ Broadband Connectivity, if favorable, Judiciary III	04-13-09	
H1433	England	CLARIFY VOLUNTEER IMMUNITY/AED.	*HR	Ch. SL 2009-424	05-04-09	05-11-09
H1433	England	CLARIFY VOLUNTEER IMMUNITY/AED.	*HR	Ch. SL 2009-424	07-16-09	07-23-09
H1447	Wiley	CRIME STOPPERS TIPS ARE CONFIDENTIAL.	*H	Ref To Com On Judiciary II	05-07-09	05-11-09
H1456	Burr	DRUG FELON/NO LARGE DOGS.	H	Re-ref Com On Judiciary II	04-13-09	05-07-09
H1460	Bryant	COLLABORATE TO STOP PROPERTY LOSS.	*H	Re-ref Com On Rules, Calendar, and Operations of the House	05-07-09	05-11-09
H1463	Dickson	EXPAND ACCESS/ CONFIDENTIAL INTERMEDIARIES.	*H	Pres. To Gov. 7/8/ 2010	04-13-09	04-16-09
1464	Parmon	CLARIFY DV LAWS/ ARREST/VALID PROTECTIVE ORDER.	*HR	Ch. SL 2009-389	04-13-09	05-07-09
H1464	Parmon	CLARIFY DV LAWS/ ARREST/VALID PROTECTIVE ORDER.	*HR	Ch. SL 2009-389	07-13-09	07-16-09
H1476	Blue	GOV. IMMUNITY/ ADEQUACY OF REMEDIES.	*H	Ref To Com On Judiciary I	04-13-09	04-23-09
H1479	Hall	PREVENT EXECUTION OF INNOCENT PERSONS.	H	Ref to the Com on Ways and Means/ Broadband Connectivity, if favorable, Judiciary I	04-13-09	
H1694=	Farmer-Butterfie	COMSN. ON CHILDREN WITH SPECIAL NEEDS-DENTIST.	HR	Ch. SL 2010-12	05-24-10	05-26-10
H1698=	Farmer-Butterfie	UPDATE LONG-TERM CARE STATUTES.	*HR	Ch. SL 2010-66	05-26-10	06-09-10
H1714=	Wainwright	SUSPENSION AND REVOCATION OF FISHING LICENSES.	*H	Pres. To Gov. 7/8/ 2010	05-27-10	06-09-10
H1734=	Cole	DOT POWERS AND DUTIES CHANGES.	*H	Pres. To Gov. 7/8/ 2010	05-27-10	06-09-10
$ H1752=	**Tolson**	**E-NC CONNECTIVITY/**	**H**	**Re-ref Com On**	**05-18-10**	**06-09-10**

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		ECONOMIC DEVELOPMENT FUNDS.		Appropriations		
[1762=	McLawhorn	DOMESTIC VIOLENCE. TRAINING FOR JUDGES.	H	Pres. To Gov. 7/8/ 2010	05-18-10	05-26-10
H1812=	Goodwin	DV CASES/REVIEW CRIMINAL RECORD.	*H	Pres. To Gov. 7/9/ 2010	06-10-10	07-01-10
H1840	Faison	REMOVE E-NC SUNSET/ STUDY COMPETING SYSTEMS.	*H	Ref To Com On Rules, Calendar, and Operations of the House	05-20-10	05-26-10
$ H1949	**Tolson**	**JOINT BROADBAND ACCESS TASK FORCE/ FUNDS.**	**H**	**Ref to the Com on Ways and Means/ Broadband Connectivity, if favorable, Appropriations**	**05-25-10**	
H1951	Heagarty	INCREASE CHILD CARE EXPENSES TAX CREDIT.	H	Re-ref Com On Finance	05-25-10	06-09-10
H2067	Faison	CASWELL INTERNET.	*H	Re-ref Com On Public Utilities	05-27-10	06-17-10
S0011	Julia Boseman	DA & ASS'T DA/ CONCEALED GUN IN COURT HOUSE.	*H	Re-ref Com On Judiciary II	05-18-09	06-18-09
S0018	Steve Goss	AMEND CEMETERY ACT.	*H	Pres. To Gov. 7/8/ 2010	05-18-09	06-17-10
S0140	John Snow	PROTECT VICTIMS/DV SHELTERS.	*HR	Ch. SL 2010-5	07-13-09	07-23-09
S0167	Charles W. Alber	NO SMOKING/CELL PHONES ON PRISON GROUNDS.	*HR	Ch. SL 2009-560	05-14-09	05-28-09
0293	Daniel G. Clodfe	JUROR QUALIFICATIONS/ ELECTRONIC JUROR LIST.	*HR	Ch. SL 2009-518	07-09-09	07-15-09
S0293	Daniel G. Clodfe	JUROR QUALIFICATIONS/ ELECTRONIC JUROR LIST.	*HR	Ch. SL 2009-518	07-28-09	08-05-09
S0357=	Tony Rand	UTILITIES/REGULATION OF POLE ATTACHMENTS.	*HR	Ch. SL 2009-278	05-14-09	06-18-09
S0372	Julia Boseman	CLARIFICATION OF NUISANCE ABATEMENT LAWS.	*H	Re-ref Com On Judiciary III	05-18-09	07-30-09
S0461=	Floyd B. McKissi	NORTH CAROLINA RACIAL JUSTICE ACT.	*HR	Ch. SL 2009-464	05-19-09	06-09-09
S0481	Fletcher L. Hart	TRUSTEE'S POWER TO APPOINT TO OTHER TRUST.	*HR	Ch. SL 2009-318	04-21-09	06-04-09
S0482	Fletcher L. Hart	CLARIFICATIONS TO TRUST CODE.	*HR	Ch. SL 2009-222	04-21-09	06-04-09
S0483	Fletcher L. Hart	CLARIFY JUDICIAL CREATION OF TRUST.	HR	Ch. SL 2009-267	04-21-09	06-04-09
S0513	Daniel G. Clodfe	NOTICE OF HEARING/ UNSUPERVISED PROBATION.	*HR	Ch. SL 2009-411	06-16-09	06-25-09
S0514	Daniel G. Clodfe	MAGISTRATES PROVIDE APPOINTMENT OF COUNSEL.	*HR	Ch. SL 2009-419	05-11-09	05-21-09
S0606	Philip E. Berger	NOTICE TO CREDITORS WITHOUT ESTATE ADMIN.	*HR	Ch. SL 2009-444	05-11-09	05-28-09

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S0622	Daniel G. Clodfe	UNDERTAKING TO STAY MONEY JUDGMENT.	H	Ref to the Com on Ways and Means/ Broadband Connectivity, if favorable, Judiciary II	05-14-09	
S0713=	Bob Rucho	REMOVAL OF ELECTRONIC MONITORING DEVICE.	*HR	Ch. SL 2009-415	06-04-09	07-15-09
S0724	Philip E. Berger	EFFECT OF CAVEAT ON ESTATE ADMINISTRATION.	HR	Ch. SL 2009-131	05-11-09	05-28-09
S0749	Daniel G. Clodfe	REVISE UM/UIM LIABILITY COVERAGE REQUIREMENTS.	*HR	Ch. SL 2009-561	07-06-09	08-05-09
S0759	Floyd B. McKissi	MODIFY DWI CHECKING STATION REQUIREMENTS.	*H	Re-ref Com On Judiciary I	05-05-09	06-25-09
S0797	Tony Rand	REASONS FOR JUDGE'S DISQUALIFICATION.	*H	Re-ref Com On Judiciary I	05-14-09	05-28-09
S0851=	Don Vaughan	SUPERVISION OF CERTAIN DEFENDANTS.	*HR	Ch. SL 2009-452	04-22-09	07-02-09
S0853	Don Vaughan	MOTION FOR APPROPRIATE RELIEF/ NEW REQUIREMENT.	*HR	Ch. SL 2009-517	04-27-09	07-02-09
S0859	Daniel G. Clodfe	TORT CLAIMS ACT/LOCAL GOV. OPT-IN.	*HR	Ch. SL 2009-519	05-18-09	06-25-09
S0884	Fletcher L. Hart	CIG SAF AMEND/DHHS ELEC. SUPERVISION.	*HR	Ch. SL 2009-490	05-14-09	07-23-09
S0900	David Rouzer	STUDIES ACT OF 2010.	*H	Pres. To Gov. 7/ 10/2010	05-19-09	06-18-09
S0929	Doug Berger	NO SET ASIDE OF BOND FORFEIT/ACTUAL NOTICE.	*HR	Ch. SL 2009-437	05-14-09	07-02-09
1017	Josh Stein	ENHANCE PROTECTIONS AGAINST IDENTITY THEFT.	*HR	Ch. SL 2009-355	05-18-09	07-08-09
S1027	Tony Rand	ZONING CHANGE/ PROPERTY OWNER NOTICE.	*HR	Ch. SL 2009-178	05-18-09	05-28-09
S1062	Julia Boseman	STRENGTHEN DOM. VIO. PROTECTIVE ORDERS/ PETS.	*HR	Ch. SL 2009-425	05-18-09	07-15-09
S1076	John Snow	MODIFY CRIM. JUSTICE PARTNERSHIP PROGRAM.	*HR	Ch. SL 2009-349	05-14-09	06-25-09
S1077	John Snow	REMOVE E-NC SUNSET.	*H	Ref To Com On Rules and Operations of the Senate	05-14-09	07-02-09
S1077	John Snow	REMOVE E-NC SUNSET.	*H	Ref To Com On Rules and Operations of the Senate	06-16-10	06-28-10
S1078	John Snow	DELAY BOND/ PROBATIONER ARRESTED FOR FELONY.	*HR	Ch. SL 2009-412	05-14-09	06-25-09
S1089	John Snow	LOW-RISK PROBATIONERS MAY BE UNSUPERVISED.	*HR	Ch. SL 2009-275	05-18-09	06-18-09
S1091	John Snow	CLARIFY WT. MEASUREMENT/METH TRAFFICKING.	*HR	Ch. SL 2009-463	05-07-09	06-18-09

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2009-2010 Biennium

Leg. Day: H-151/S-148

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S1209	David W. Hoyle	STUDY COMPETING SYSTEMS/INTERIM DEBT.	*H	Ref.to the Com on Ways and Means/ Broadband Connectivity, if favorable, Public Utilities	06-09-10	
S1399=	Floyd B. McKissi	ZONING/DURHAM COUNTY PROTEST PETITIONS.	*HR	Ch. SL 2010-80	06-29-10	07-07-10

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MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, May 26, 2010

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, May 26, 2010, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates; Representatives Kelly Alexander, and Dewey Hill. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Seitz. House Sergeant-at-Arms assisting: John Brandon and Dusty Rhodes. House Pages: Isaiah McArthur of Durham County and Dakota Boyd of Johnston County. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. The following bills were placed before the Committee:

House Bill 1694 - A BILL TO BE ENTITLED: an act to add a licensed dentist to the Commission on Children with Special Health Care Needs, as recommended by the North Carolina study commission on aging. The Chair called upon the bill sponsor Rep. Farmer-Butterfield to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 3*)

House Bill 1762 - A BILL TO BE ENTITLED: an act to request that the North carolina supreme court establish minimum standards of Domestic Violence education and training for district Court judges, and to encourage the University of North Carolina School of Government to provide domestic Violence education and Training for judges and magistrates, as recommended by the joint legislative committee on domestic violence. The Chair called upon the bill sponsor Rep. Warren to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 4*)

House Bill 1840 - A BILL TO BE ENTITLED: an act to repeal the sunset provision pertaining to the e-nc authority, as recommended by the house select committee on high-speed internet access in rural and urban areas. The Chair called upon the bill

sponsor Rep. Alexander to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Coates was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis, and Committee Report are attached. (*Attachment 5*)

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:11 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, May 26, 2010
1:00PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	HB 1694	Comsn. on Children with Special Needs-Dentist	Representative Farmer-Butterfield
2.	HB 1752	E-NC Connectivity/Economic Development Funds.	Representative Tolson
3.	HB 1762	Domestic Violence Training for Judges.	Representative McLawhorn
4.	HB 1840	Remove Sunset/e-NC Authority.	Representative Faison

4. **Adjourn**

VISITOR REGISTRATION SHEET

Ways and Means — 26 May 2010

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cedric Johnson	NC Institute of Min. Econ. Dev.
Antoine Marshall	Nc Institute of Minority Economic Development
Victor Galloway	" " "
Chris Hollis	Trustar Sandhills Strategies
Tamara Hardy	Electricities of NC
Doris Weaver	CWA
Jane Patterson	e-NC Authority
BRIAN DEMPSEY	MWC
Kelly Graham	NCAJ
[illegible]	NCAJ
Steve Brewer	CenturyLink

VISITOR REGISTRATION SHEET

Ways & Means — 26 May 2010

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Herb Crenshaw	AT&T
Pam Melton	Cox

HOUSE BILL 1694*

Short Title:	Comsn. on Children with Special Needs-Dentist.	(Public)
Sponsors:	Representatives Farmer-Butterfield, Pierce, Weiss, England (Primary Sponsors); Adams, M. Alexander, Brisson, Carney, Dockham, Fisher, E. Floyd, Gill, Glazier, Harrison, Hughes, Insko, Jones, McLawhorn, Mobley, Moore, Parfitt, Parmon, Ross, Tarleton, Wainwright, R. Warren, and Whilden.	
Referred to:	Health, if favorable, Ways and Means/Broadband Connectivity.	

May 13, 2010

A BILL TO BE ENTITLED

AN ACT TO ADD A LICENSED DENTIST TO THE COMMISSION ON CHILDREN WITH SPECIAL HEALTH CARE NEEDS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-682 reads as rewritten:

"**§ 143-682. Commission established.**

(a) There is established the Commission on Children With Special Health Care Needs. The Department of Health and Human Services shall provide staff services and space for Commission meetings. The purpose of the Commission is to monitor and evaluate the availability and provision of health services to special needs children in this State, and to monitor and evaluate services provided to special needs children under the Health Insurance Program for Children established under Part 8 of Article 2 of Chapter 108A of the General Statutes.

(b) The Commission shall consist of ~~eight~~ nine members appointed by the Governor, as follows:

(1) Two parents, not of the same family, each of whom has a special needs child. In appointing parents, the Governor shall consider appointing one parent of a child with chronic illness and one parent of a child with a developmental disability or behavioral disorder.

(2) A licensed psychiatrist recommended by the North Carolina Psychiatric ~~Association;~~Association.

(3) A licensed psychologist recommended by the North Carolina Psychological ~~Association;~~Association.

(4) A licensed pediatrician whose practice includes services for special needs children, recommended by the Pediatric Society of North ~~Carolina;~~Carolina.

(5) A representative of one of the children's hospitals in the State, recommended by the Pediatric Society of North ~~Carolina;~~Carolina.

(6) A local public health director recommended by the Association of Local Health ~~Directors; and~~ Directors.

(7) An educator providing education services to special needs children, recommended by the North Carolina Council of Administrators of Special Education.

(8) A licensed dentist who provides services to children with special needs, recommended by the North Carolina Dental Society.

(c) The Governor shall appoint from among Commission members the person who shall serve as chair of the Commission. Of the initial appointments, two shall serve one-year terms, three shall serve two-year terms, and three shall serve three-year terms. Thereafter, terms shall be for two years. Vacancies occurring before expiration of a term shall be filled from the same appointment category in accordance with subsection (b) of this section."

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

HOUSE BILL 1694:
Comsn. on Children with Special Needs-Dentist

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	May 26, 2010
Introduced by:	Reps. Farmer-Butterfield, Pierce, Weiss, England	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1694 adds a licensed dentist who provides services to children with special needs to the Commission on Children with Special Health Care Needs.

[As introduced, this bill was identical to S1204, as introduced by Sen. Swindell, which is currently in Senate Health Care.]

CURRENT LAW:

The Commission on Children with Special Health Care Needs is directed to monitor and evaluate the availability and provision of health services in North Carolina for children with special needs and in addition to monitor and evaluate services for such children under the Health insurance Program for Children. The Commission is appointed by the Governor and the Department of Health and Human Services provides staff assistance and meeting space.

The current Commission consists of the following appointees:

- Two parents of children with special needs
- A licensed psychiatrist
- A licensed psychologist
- A licensed pediatrician whose practices includes services for children with special needs
- A representative of a children's hospital
- A local public health director
- An educator of children with special needs

BILL ANALYSIS: House Bill 1694 adds a licensed dentist who provides services to children with special needs as a ninth member to the Commission on Children with Special Health Care Needs. The member would be appointed by the Governor as recommended by the North Carolina Dental Society.

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

BACKGROUND:

This is a North Carolina Study Commission on Aging recommendation based on the findings and recommendations of the Special Care Dentistry Collaboration established in Session Law 2009-100.

H1694-SMSA-139(e1) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1694 A BILL TO BE ENTITLED AN ACT TO ADD A LICENSED DENTIST TO THE COMMISSION ON CHILDREN WITH SPECIAL HEALTH CARE NEEDS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 1762*

Short Title:	Domestic Violence Training for Judges.	(Public)
Sponsors:	Representatives McLawhorn, Farmer-Butterfield, R. Warren, Ross (Primary Sponsors); Bell, Carney, Dockham, Faison, Fisher, Gill, Harrison, Hughes, Insko, Jackson, Parfitt, Pierce, Rapp, Tarleton, and Weiss.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Judiciary II.	

May 18, 2010

A BILL TO BE ENTITLED

AN ACT TO REQUEST THAT THE NORTH CAROLINA SUPREME COURT ESTABLISH MINIMUM STANDARDS OF DOMESTIC VIOLENCE EDUCATION AND TRAINING FOR DISTRICT COURT JUDGES, AND TO ENCOURAGE THE UNIVERSITY OF NORTH CAROLINA SCHOOL OF GOVERNMENT TO PROVIDE DOMESTIC VIOLENCE EDUCATION AND TRAINING FOR JUDGES AND MAGISTRATES, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Supreme Court is respectfully requested to adopt rules establishing minimum standards of education and training for district court judges in handling civil and criminal domestic violence cases.

SECTION 2. The University of North Carolina School of Government is encouraged to provide education and training opportunities for district court judges and magistrates in the handling of civil and criminal domestic violence cases.

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

HOUSE BILL 1762:
Domestic Violence Training for Judges

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary II	**Date:**	May 26, 2010
Introduced by:	Reps. McLawhorn, Farmer-Butterfield, R. Warren, Ross	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1762 requests that the North Carolina Supreme Court establish minimum standards of domestic violence education and training for district court judges, and encourages the University of North Carolina School of Government to provide domestic violence education and training for judges and magistrates, as recommended by the Joint Legislative Committee on Domestic Violence.***

[As introduced, this bill was identical to S1241, as introduced by Sen. Graham, which is currently in Rules and Operations of the Senate.]

BILL ANALYSIS:

Section 1 requests the North Carolina Supreme Court to adopt rules establishing minimum standards of education and training for district court judges in handling civil and criminal domestic violence cases.

Section 2 encourages The University of North Carolina School of Government to provide education and training opportunities for district court judges and magistrates in the handling of civil and criminal domestic violence cases.

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

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1762 A BILL TO BE ENTITLED AN ACT TO REQUEST THAT THE NORTH CAROLINA SUPREME COURT ESTABLISH MINIMUM STANDARDS OF DOMESTIC VIOLENCE EDUCATION AND TRAINING FOR DISTRICT COURT JUDGES, AND TO ENCOURAGE THE UNIVERSITY OF NORTH CAROLINA SCHOOL OF GOVERNMENT TO PROVIDE DOMESTIC VIOLENCE EDUCATION AND TRAINING FOR JUDGES AND MAGISTRATES, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 1840

Short Title:	Remove Sunset/e-NC Authority.	(Public)
Sponsors:	Representatives Faison, Jones, West, Tillis (Primary Sponsors); Gulley, Insko, Justice, and Wray.	
Referred to:	Ways and Means/Broadband Connectivity.	

May 20, 2010

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE SUNSET PROVISION PERTAINING TO THE E-NC AUTHORITY, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON HIGH-SPEED INTERNET ACCESS IN RURAL AND URBAN AREAS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2003-425, as amended by Section 12.3(a) of S.L. 2006-66, reads as rewritten:

"**SECTION 4.** Sections 1 and 2 of this act become effective December 31, 2003, with the e-NC Authority hereby designated as the successor entity of the Rural Internet Access Authority that will dissolve on that date, as provided by Section 5 of S.L. 2000-149. The remainder of this act is effective when it becomes law. ~~The e-NC Authority created in this act is dissolved effective December 31, 2011. This act is repealed effective December 31, 2011. Part 2F of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(77), as enacted by this act, are repealed effective December 31, 2011.~~"

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

HOUSE BILL 1840:
Remove Sunset/e-NC Authority

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	May 25, 2010
Introduced by:	Reps. Faison, Jones, West, Tillis	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1840 would repeal the sunset provision pertaining to the e-NC Authority. The bill is a recommendation of the House Select Committee on High Speed Internet Access.

CURRENT LAW: The e-NC Authority is an independent agency within the Department of Commerce. The purpose of the Authority is to manage, oversee, promote, and monitor efforts to provide rural counties and distressed urban areas with high-speed broadband Internet access. The Authority also serves as the central rural and urban distressed areas Internet access policy planning body of the State. The authority is directed by law to communicate and coordinate with State, regional, and local agencies and private entities in order to continue the development and facilitation of a coordinated Internet access policy for the citizens of North Carolina.

BILL ANALYSIS: The e-NC Authority was created by the General Assembly in 2003 and designated as the designated as the successor entity of the Rural Internet Access Authority. E-NC was initially scheduled to be dissolved effective December 31, 2006; but it was extended for an additional five years and is now scheduled to be dissolved effective December 31, 2011. This bill would remove the sunset provision entirely.

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

H1840-SMRV-121(e1) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1840 A BILL TO BE ENTITLED AN ACT TO REPEAL THE SUNSET PROVISION PERTAINING TO THE E-NC AUTHORITY, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON HIGH-SPEED INTERNET ACCESS IN RURAL AND URBAN AREAS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, June 9, 2010

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, June 9, 2010, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, John May, Angela Bryant, Jim Gulley, Phil Haire, Mark Hilton, Sarah Stevens and Joe Tolson. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Seitz. House Sergeant-at-Arms assisting: John Brandon, Marvin Lee and Earl Coker. House Pages: Allison High of Vance County and Connor Tripp of Chowan County. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. The following bills were placed before the Committee:

House Bill 1734 - A BILL TO BE ENTITLED: an act to eliminate a Department of Transportation report on the condition of its buildings; correct a statutory reference to the Department of Transportation's chief financial officer; eliminate statutory references to seven-year transportation improvement program; clarify that the Department of Transportation has authority and general supervision over all transportation projects; provide that the department of Transportation has authority to enter into agreements with local governments to receive funds for right-of-way acquisition; update statutory references to the North Carolina Turnpike Authority; Eliminate a Department of Transportation report on access to coastal waters; revise the statutes governing the Department of Transportations disadvantaged minority-owned and women-owned businesses program; and transfer to the secretary the power to promulgate Department of Transportation rules, as recommended by the joint legislative transportation oversight committee. The Chair called upon the bill sponsor Rep. Cole to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 3*)

House Bill 1951 - A BILL TO BE ENTITLED: an act to increase the child care expenses tax credit. The Chair called upon the bill sponsor Rep. Heagarty to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and

comments. Rep. Tillis was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 4*)

House Bill 1714 - A BILL TO BE ENTITLED: an act to direct the marine fisheries commission to adopt rules related to the suspension, revocation, and reissuance of licenses and to make conforming changes, as recommended by the joint legislative commission on seafood and aquaculture. The Chair called upon the bill sponsor Rep. Wainwright to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 5*)

House Bill 1698 - A BILL TO BE ENTITLED: an act to update and clarify North Carolina's General Statutes on Older Adults and Long-Term Services and supports, as recommended by the North Carolina study commission on aging. The Chair called upon the bill sponsor Rep. Weiss to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 6*)

House Bill 1752 - A BILL TO BE ENTITLED: an act appropriating funds to the e-NC authority to support connectivity initiatives and to advance technology-based economic development throughout the state. The Chair called upon the bill sponsor Rep. Tolson to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Alexander was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 7*)

House Bill 2067 - A BILL TO BE ENTITLED: an act to allow Caswell County to provide internet services, an authorized purpose under cable television. The Chair pulled the bill from the calendar with the explanation that the providers and town are having a discussion on the matter. The Bill and Bill Analysis are attached. (*Attachment 8*)

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:26 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, June 9, 2010
1:00PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	HB 1698	Update Long-Term Care Statutes.	Representative Weiss
2.	HB 1714	Suspension and Revocation of Fishing Licenses.	Representative Wainwright
3.	HB 1734	DOT Powers and Duties Changes.	Representative Cole
4.	HB 1752	E-NC Connectivity/Economic Development Funds.	Representative Tolson
5.	HB 1951	Increase Child Care Expenses Tax Credit.	Representative Heagarty
6.	HB 2067	Caswell Internet.	Representative Faison

4. **Adjourn**

VISITOR REGISTRATION SHEET

WAYS & MEANS — 6/9/10

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stan Pace	Verizon
HERB GRENSHAW	AT+T
Bill Waugh	allted
DAVID BARNES	Poyner Spruill
Dwight Allen	Allen Law Offices, PLLC
Steve Brower	CenturyLink
Bob Wells	NCLIST Electronic Communication
Gray Wilson	Fiscal Research
Bill Sepe	Acron Audits
C Rice	Acron Audits
Bob Hall	NWC
Evelyn Hawmore	EFGR

VISITOR REGISTRATION SHEET

WAYS & MEANS — 6/9/10

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Benson	AT&T
Doris Weaver	CWA
Penny Griffin	School of Gov.
Johanna Reese	DOT
Janie Hauser	DENR
Louis Daniel	NC Marine Fisheries
DICK HAMILTON	NC Wildlife Federation
Sammy Roberson	TWC
Bill Phillips	TWC
Mary Tabor	Brooks Pierce
Julie White	NCMMC
Jerry Hardesty	J. Warren Tomas

VISITOR REGISTRATION SHEET

Ways & Means — 6/9/10

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pam Melton	Centennial
Saul [illegible]	Rep. Kelly Alexander
Theresa Canales	NCDOT
Mark Tyler	NCDOT
Jesse Goodman	DHHS
Anthony Allon	NCACC
Paula Wolf	Friends of Residents in Long Term Care
Allie Calder	Paulatics
Marcia Trant	NCACC
[illegible]	[illegible]
Chris Hawthorne	

VISITOR REGISTRATION SHEET

Ways & Means — 6/9/10

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jem Griffith	Entcon Chris Hargurly
Michelle Frazier	MF+S
John Harder	MF+S

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1734*
Committee Substitute Favorable 5/27/10

Short Title: DOT Powers and Duties Changes. (Public)

Sponsors:

Referred to:

May 17, 2010

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE A DEPARTMENT OF TRANSPORTATION REPORT ON THE CONDITION OF ITS BUILDINGS; CORRECT A STATUTORY REFERENCE TO THE DEPARTMENT OF TRANSPORTATION'S CHIEF FINANCIAL OFFICER; ELIMINATE STATUTORY REFERENCES TO A SEVEN-YEAR TRANSPORTATION IMPROVEMENT PROGRAM; CLARIFY THAT THE DEPARTMENT OF TRANSPORTATION HAS AUTHORITY AND GENERAL SUPERVISION OVER ALL TRANSPORTATION PROJECTS; PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION HAS AUTHORITY TO ENTER INTO AGREEMENTS WITH LOCAL GOVERNMENTS TO RECEIVE FUNDS FOR RIGHT-OF-WAY ACQUISITION; UPDATE STATUTORY REFERENCES TO THE NORTH CAROLINA TURNPIKE AUTHORITY; ELIMINATE A DEPARTMENT OF TRANSPORTATION REPORT ON ACCESS TO COASTAL WATERS; REVISE THE STATUTES GOVERNING THE DEPARTMENT OF TRANSPORTATION'S DISADVANTAGED MINORITY-OWNED AND WOMEN-OWNED BUSINESSES PROGRAM; AND TRANSFER TO THE SECRETARY THE POWER TO PROMULGATE DEPARTMENT OF TRANSPORTATION RULES, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-11 is repealed.

SECTION 2. G.S. 136-16.10 reads as rewritten:

"**§ 136-16.10. Allocations by Department ~~Controller~~ Chief Financial Officer to eliminate overdrafts.**

The ~~Controller~~ Chief Financial Officer of the Department of Transportation shall allocate at the beginning of each fiscal year from the various appropriations made to the Department of Transportation for State Construction, State Funds to Match Federal Highway Aid, State Maintenance, and Ferry Operations, sufficient funds to eliminate all overdrafts on State maintenance and construction projects, and these allocations shall not be diverted to other purposes."

SECTION 3. G. S. 136-17.2A(d) reads as rewritten:

"(d) In each fiscal year, the Department shall, as nearly as practicable, expend in a distribution region an amount equal to that region's tentative percentage share of the funds that are subject to this section and are available for that fiscal year. In any ~~consecutive seven-year~~ Transportation Improvement Plan period, the amount expended in a distribution region must be between ninety percent (90%) and one hundred ten percent (110%) of the sum of the amounts established under this subsection as the target amounts to be expended in the region for ~~those seven years.~~that period."

SECTION 4. G.S. 136-18(1) reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

The said Department of Transportation is vested with the following powers:

(1) The authority and general supervision over all matters relating to the ~~construction~~ construction, maintenance, and design of ~~the~~ State ~~highways,~~ transportation projects, letting of contracts therefore, and the selection of materials to be used in the construction of State ~~highways~~ transportation projects under the authority of this Chapter.

...."

SECTION 5. G.S. 136-18(12b) reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

The said Department of Transportation is vested with the following powers:

...

(12b) To issue "GARVEE" bonds (Grant Anticipation Revenue Vehicles) or other eligible debt-financing instruments to finance federal-aid highway projects using federal funds to pay a portion of principal, interest, and related bond issuance costs, as authorized by 23 U.S.C. § 122, as amended (the National Highway System Designation Act of 1995, Pub. L. 104-59). These bonds shall be issued by the State Treasurer on behalf of the Department and shall be issued pursuant to an order adopted by the Council of State under G.S. 159-88. The State Treasurer shall develop and adopt appropriate debt instruments, consistent with the terms of the State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, for use under this subdivision. Prior to issuance of any "GARVEE" or other eligible debt instrument using federal funds to pay a portion of principal, interest, and related bond issuance costs, the State Treasurer shall determine (i) that the total outstanding principal of such debt does not exceed the total amount of federal transportation funds authorized to the State in the prior federal fiscal year; or (ii) that the maximum annual principal and interest of such debt does not exceed fifteen percent (15%) of the expected average annual federal revenue shown for the ~~seven-year~~ period in the most recently adopted Transportation Improvement Program. Notes issued under the provisions of this subdivision may not be deemed to constitute a debt or liability of the State or of any political subdivision thereof, or a pledge of the full faith and credit of the State or of any political subdivision thereof, but shall be payable solely from the funds and revenues pledged therefor. All the notes shall contain on their face a statement to the effect that the State of North Carolina shall not be obligated to pay the principal or the interest on the notes, except from the federal transportation fund revenues as shall be provided by the documents governing the revenue note issuance, and that neither the faith and credit nor the taxing power of the State of North Carolina or of any of its political subdivisions is pledged to the payment of the principal or interest on the notes. The issuance of notes under this Part shall not directly or indirectly or contingently obligate the State or any of its political subdivisions to levy or to pledge any form of taxation whatever or to make any appropriation for their payment.

...."

SECTION 6. G.S. 136-18(38) reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

The said Department of Transportation is vested with the following powers:

...

(38) To enter into agreements with municipalities, counties, governmental entities, or nonprofit corporations to receive funds for the ~~purpose~~ purposes of advancing right-of-way acquisition or the construction schedule of a project identified in the Transportation Improvement Program. If these funds are subject to repayment by the Department, prior to receipt of funds, reimbursement of all funds received by the Department shall be shown in the existing Transportation Improvement Program and shall be reimbursed within ~~seven years of receipt.~~ the period of the existing Transportation Improvement Program.

...."

SECTION 7. G.S. 136-18(39) reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

The said Department of Transportation is vested with the following powers:

...

(39) To enter into partnership agreements with ~~the North Carolina Turnpike Authority,~~ private entities, and authorized political subdivisions to finance, by tolls, contracts, and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating transportation infrastructure in this State, and to plan, design, develop, acquire, construct, equip, maintain, and operate transportation infrastructure in this State. An agreement entered into under this subdivision requires the concurrence of the Board of Transportation. The Department shall report to the Chairs of the Joint Legislative Transportation Oversight Committee, the Chairs of the House of Representatives Appropriations Subcommittee on Transportation, and the Chairs of the Senate Appropriations Committee on the Department of Transportation, at the same time it notifies the Board of Transportation of any proposed agreement under this subdivision. Any contracts for construction of highways, roads, streets, and bridges which are awarded pursuant to an agreement entered into under this section shall comply with the competitive bidding requirements of Article 2 of this Chapter.

...."

SECTION 8. G.S. 136-18(40) reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

The said Department of Transportation is vested with the following powers:

...

(40) To expand public access to coastal waters in its road project planning and construction programs. The Department shall work with the Wildlife Resources Commission, other State agencies, and other government entities to address public access to coastal waters along the roadways, bridges, and other transportation infrastructure owned or maintained by the Department. The Department shall adhere to all applicable design standards and guidelines in implementation of this enhanced access. ~~The Department shall report on its progress in expanding public access to coastal waters to the Joint Legislative Commission on Seafood and Aquaculture and to the Joint Legislative Transportation Oversight Commission no later than March 1 of each year.~~

...."

SECTION 9. G.S. 136-28.4 reads as rewritten:

"**§ 136-28.4. State policy concerning participation by disadvantaged minority-owned and women-owned businesses in ~~highway~~ transportation contracts.**

(a) It is the policy of this State, based on a compelling governmental interest, to encourage and promote participation by disadvantaged minority-owned and women-owned businesses in contracts let by the Department pursuant to this Chapter for the planning, design, preconstruction, construction, alteration, or maintenance of State ~~highways, roads, streets, or bridges~~ transportation infrastructure and in the procurement of materials for these projects. All State agencies, institutions, and political subdivisions shall cooperate with the Department of Transportation and among themselves in all efforts to conduct outreach and to encourage and promote the use of disadvantaged minority-owned and women-owned businesses in these contracts.

(b) At least every five years, the Department shall conduct a study on the availability and utilization of disadvantaged minority-owned and women-owned business enterprises and examine relevant evidence of the effects of race-based or gender-based discrimination upon the utilization of such business enterprises in contracts for planning, design, preconstruction, construction, alteration, or maintenance of State ~~highways, roads, streets, or bridges~~ transportation infrastructure and in the procurement of materials for these projects. Should the study show a strong basis in evidence of ongoing effects of past or present discrimination that prevents or limits disadvantaged minority-owned and women-owned businesses from participating in the above contracts at a level which would have existed absent such discrimination, such evidence shall constitute a basis for the State's continued compelling governmental interest in remedying such race and gender discrimination in ~~highway~~ transportation contracting. Under such circumstances, the Department shall, in conformity with State and federal law, adopt by rule and contract provisions a specific program to remedy such discrimination. This specific program shall, to the extent reasonably practicable, address each barrier identified in such study that adversely affects contract participation by disadvantaged minority-owned and women-owned businesses.

(b1) Based upon the findings of the Department's ~~Second Generation Disparity Study completed in 2004,~~ 2009 study entitled "Measuring Business Opportunity: A Disparity Study of NCDOT's State and Federal Programs" hereinafter referred to as "Study", the program design shall, to the extent reasonably practicable, incorporate narrowly tailored remedies identified in the Study, and the Department shall implement a comprehensive antidiscrimination enforcement policy. As appropriate, the program design shall be modified by rules adopted by the Department that are consistent with findings made in the Study and in subsequent studies conducted in accordance with subsection (b) of this section. As part of this program, the Department shall review its budget and establish ~~annual~~ aspirational goals every three years, not mandatory goals, in percentages, for the overall participation in contracts by disadvantaged minority-owned and women-owned businesses. These ~~annual~~ aspirational goals for disadvantaged minority-owned and women-owned businesses shall be established consistent with federal ~~methodology specified in the Study,~~ methodology, and they shall not be applied rigidly on specific contracts or projects. Instead, the Department shall establish contract-specific goals or project-specific goals for the participation of such firms in a manner consistent with availability of disadvantaged minority-owned and women-owned businesses, as appropriately defined by its most recent Study, for each disadvantaged minority-owned and women-owned business category that has demonstrated significant disparity in contract utilization. Nothing in this section shall authorize the use of quotas. Any program implemented as a result of the Study conducted in accordance with this section shall be narrowly tailored to eliminate the effects of historical and continuing discrimination and its impacts on such disadvantaged minority-owned and women-owned businesses without any undue burden on other contractors. The Department shall give equal opportunity for contracts it lets without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3, to all contractors and businesses otherwise qualified.

(c) The following definitions apply in this section:

(1) "Disadvantaged ~~business~~Business" has the same meaning as "disadvantaged business enterprise" in 49 C.F.R. § 26.5 Subpart A or any subsequently promulgated replacement regulation.

(2) "Minority" includes only those racial or ethnicity classifications identified by a study conducted in accordance with this section that have been subjected to discrimination in the relevant marketplace and that have been adversely affected in their ability to obtain contracts with the Department.

(3) "Women" means nonminority persons born of the female gender.

(d) The Department shall report ~~semiannually~~ annually to the Joint Legislative Transportation Oversight Committee on the utilization of disadvantaged minority-owned businesses and women-owned businesses and any program adopted to promote contracting opportunities for those businesses. Following each study of availability and utilization, the Department shall report to the Joint Legislative Transportation Oversight Committee on the results of the study for the purpose of determining whether the provisions of this section should continue in force and effect.

(e) This section expires August 31, ~~2010~~ 2014."

SECTION 10. G.S. 136-89.189 reads as rewritten:

"**§ 136-89.189. Turnpike Authority revenue bonds.**

The Authority shall be a municipality for purposes of Article 5 of Chapter 159 of the General Statutes, the State and Local Government Revenue Bond Act, and may issue revenue bonds pursuant to that Act to pay all or a portion of the cost of a Turnpike Project or to refund any previously issued bonds. In connection with the issuance of revenue bonds, the Authority shall have all powers of a municipality under the State and Local Government Revenue Bond Act, and revenue bonds issued by the Authority shall be entitled to the protection of all provisions of the State and Local Government Revenue Bond Act.

Except as provided in this section, the provisions of Chapter 159 of the General Statutes, the Local Government Finance Act, apply to revenue bonds issued by the Turnpike Authority.

(1) The term of a lease between the Turnpike Authority and the Department executed prior to July 27, 2009, for all or any part of a Turnpike Project may exceed 40 years, as agreed by the Authority and the Department.

(2) The maturity date of a refunding bond may extend to the earlier of the following:

a. Forty years from the date of issuance of the refunding bond.

b. The date the Turnpike Authority determines is the maturity date required for the Turnpike Project funded with the refunding bonds to generate sufficient revenues to retire the refunding bonds and any other outstanding indebtedness issued for that Project. The Authority's determination of the appropriate maturity date is conclusive and binding. In making its determination, the Authority may take into account appropriate financing terms and conventions."

SECTION 11. G.S. 143B-348 reads as rewritten:

"**§ 143B-348. Department of Transportation – head; rules, regulations, etc., of Board of Transportation.**

The Secretary of Transportation shall be the head of the Department of Transportation. He shall carry out the day-to-day operations of the Department and shall be responsible for carrying out the policies, programs, priorities, and projects approved by the Board of Transportation. He shall be responsible for all other transportation matters assigned to the Department of Transportation, except those reserved to the Board of Transportation by statute. Except as otherwise provided for by statute, the Secretary shall have all the powers and duties as provided for in Article 1 of Chapter 143B including the responsibility for all management functions for the Department of Transportation. The Secretary shall be vested with authority to

adopt design criteria, construction specifications, and standards as required for the Department of Transportation to construct and maintain highways, bridges, and ferries. The Secretary or the Secretary's designee shall be vested with authority to promulgate rules and regulations concerning all transportation functions assigned to the Department.

All rules, regulations, ordinances, specifications, standards, and criteria adopted by the Board of Transportation and in effect on July 1, 1977, shall continue in effect until changed by the Board of Transportation or the Secretary of Transportation. The Secretary shall have complete authority to modify any of these matters existing on July 1, 1977, except as specifically restricted by the Board. Whenever any such criteria, rule, regulation, ordinance, specification, or standards are continued in effect under this section and the words "Board of Transportation" are used, the words shall mean the "Department of Transportation" unless the context makes such meaning inapplicable. All actions pending in court by or against the Board of Transportation may continue to be prosecuted in that name without the necessity of formally amending the name to the Department of Transportation."

SECTION 12. G.S. 143B-350(f)(4) reads as rewritten:

"(f) Duties of the Board. – The Board of Transportation has the following duties and powers:

...

(4) To approve a schedule of all major transportation improvement projects and their anticipated ~~cost for a period of seven years into the future.~~ cost. This schedule is designated the Transportation Improvement Program; it must be published and copies must be available for distribution. The document that contains the Transportation Improvement Program, or a separate document that is published at the same time as the Transportation Improvement Program, must include the anticipated funding sources for the improvement projects included in the Program, a list of any changes made from the previous year's Program, and the reasons for the changes.

...."

SECTION 13. G.S. 143B-350(f)(13) is repealed.

SECTION 14. G.S. 159-81(1) reads as rewritten:

"**§ 159-81. Definitions.**

The words and phrases defined in this section shall have the meanings indicated when used in this Article:

(1) "Municipality" means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, special district created under Article 43 of Chapter 105 of the General Statutes, regional public transportation authority, regional transportation authority, regional natural gas district, regional sports authority, airport authority, joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, a joint agency authorized by agreement between two cities to operate an airport pursuant to G.S. 63-56, and the North Carolina Turnpike Authority ~~created pursuant to~~ described in Article 6H of Chapter 136 of the General ~~Statutes,~~ Statutes and transferred to the Department of Transportation pursuant to G.S. 136-89.182(b), but not any other forms of State or local government.

...."

SECTION 15. This act is effective when it becomes law.

HOUSE BILL 1734:
DOT Powers and Duties Changes

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	June 8, 2010
Introduced by:	Rep. Cole	**Prepared by:**	Susan Sitze*
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1734 makes several changes to statutes governing the Department of Transportation, as recommended by the Joint Legislative Transportation Oversight Committee.***

[As introduced, this bill was identical to S1159, as introduced by Sen. Goss, which is currently in Senate Transportation.]

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 1734 amends statutes governing the Department of Transportation as follows:

Section 1. Repeals a requirement that the Department report annually to the Department of Administration, or to the Governor, on its finances and the physical condition of its buildings, depots, and properties.

Section 2. Corrects terminology in G.S. 136-16.10, replacing the term "Controller" with "Chief Financial Officer".

Sections 3, 5, 6, and 12. Eliminate references to a seven-year period for the Transportation Improvement Program.

Section 4. Clarifies that the Department has authority over all construction, maintenance, and design of transportation projects.

Section 6. Provides that the Department may enter into agreements with municipalities, counties, governmental entities, or nonprofit corporations to receive funds for right-of-way acquisition.

Sections 7, 10, and 14. Update references to the North Carolina Turnpike Authority to reflect the transfer of the Authority to the Department.

Section 8. Eliminates a requirement that the Department report annually to the Joint Legislative Commission on Seafood and Aquaculture and the Joint Legislative Transportation Oversight Committee on the Department's progress in expanding public access to coastal waters.

Section 9. Updates the statute setting out the Department's Disadvantaged Minority-Owned and Women-Owned Businesses Program and extends its sunset from August 31, 2010, to August 31, 2014.

Sections 11 and 13. Transfers the power to make rules and regulations concerning transportation functions assigned to the Department from the Board of Transportation to the Secretary of Transportation or the Secretary's designee.

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

**Wendy Graf Ray, Staff Attorney, contributed substantially to this summary.*

H1734-SMSA-145(e2) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

HB 1734 A BILL TO BE ENTITLED AN ACT TO ELIMINATE A DEPARTMENT OF TRANSPORTATION REPORT ON THE CONDITION OF ITS BUILDINGS; CORRECT A STATUTORY REFERENCE TO THE DEPARTMENT OF TRANSPORTATION'S CHIEF FINANCIAL OFFICER; ELIMINATE STATUTORY REFERENCES TO A SEVEN-YEAR TRANSPORTATION IMPROVEMENT PROGRAM; CLARIFY THAT THE DEPARTMENT OF TRANSPORTATION HAS AUTHORITY AND GENERAL SUPERVISION OVER ALL TRANSPORTATION PROJECTS; PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION HAS AUTHORITY TO ENTER INTO AGREEMENTS WITH LOCAL GOVERNMENTS TO RECEIVE FUNDS FOR RIGHT-OF-WAY ACQUISITION; UPDATE STATUTORY REFERENCES TO THE NORTH CAROLINA TURNPIKE AUTHORITY; ELIMINATE A DEPARTMENT OF TRANSPORTATION REPORT ON ACCESS TO COASTAL WATERS; REVISE THE STATUTES GOVERNING THE DEPARTMENT OF TRANSPORTATION'S DISADVANTAGED MINORITY-OWNED AND WOMEN-OWNED BUSINESSES PROGRAM; AND TRANSFER TO THE SECRETARY THE POWER TO PROMULGATE DEPARTMENT OF TRANSPORTATION RULES, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1951

Short Title:	Increase Child Care Expenses Tax Credit.	(Public)
Sponsors:	Representatives Heagarty; Faison, Gill, Goodwin, Hughes, Jackson, Lucas, Parfitt, and Stewart.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Finance.	

May 25, 2010

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CHILD CARE EXPENSES TAX CREDIT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-151.11(a1) reads as rewritten:

"(a1) Applicable Percentage. – For employment-related expenses that are incurred only with respect to one or more dependents who are seven years old or older and are not physically or mentally incapable of caring for themselves, the applicable percentage is the appropriate percentage in the column labeled "Percentage A" in the table below, based on the taxpayer's adjusted gross income determined under the Code. For employment-related expenses with respect to any other qualifying individual, the applicable percentage is the appropriate percentage in the column labeled "Percentage B" in the table below, based on the taxpayer's adjusted gross income determined under the Code.

Filing Status	**Adjusted Gross Income**	**Percentage A**	**Percentage B**
Head of Household	Up to $20,000	~~9%~~12%	~~13%~~15%
	Over $20,000 up to $32,000	~~8%~~11%	~~11.5%~~ 13.5%
	Over $32,000	~~7%~~10%	~~10%~~12%
Surviving Spouse or Joint Return	Up to $25,000	~~9%~~12%	~~13%~~15%
	Over $25,000 up to $40,000	~~8%~~11%	~~11.5%~~ 13.5%
	Over $40,000	~~7%~~10%	~~10%~~12%
Single	Up to $15,000	~~9%~~12%	~~13%~~15%
	Over $15,000		

	up to $24,000	~~8%~~11%	~~11.5%~~ 13.5%
	Over $24,000	~~7%~~10%	~~10%~~12%
Married Filing Separately	Up to $12,500	~~9%~~12%	~~13%~~15%
	Over $12,500 up to $20,000	~~8%~~11%	~~11.5%~~ 13.5%
	Over $20,000	~~7%~~10%	~~10%~~12%"

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2010.

HOUSE BILL 1951:
Increase Child Care Expenses Tax Credit

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Finance	**Date:**	June 8, 2010
Introduced by:	Rep. Heagarty	**Prepared by:**	Tim Hovis
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 1951 amends G.S. 105-151.11, *Credit for child care and certain employment-related expenses*, to increase the child care expenses tax credit authorized under the statute.

CURRENT LAW: For individuals who are eligible to claim a credit for child and dependent care expenses on their federal tax return, G.S. 105-151.11 authorizes an additional state income tax credit. The amount of the credit varies according to the age of the dependents, the individual's filing status and federally adjusted gross income, and whether the dependents are physically or mentally incapable of caring for themselves. For individuals with dependents 7 years of age or older who are not physically or mentally incapable of caring for themselves, the percentage of the credit is listed by adjusted gross income in the column labeled "Percentage A." The amount for all other qualifying individuals is listed by adjusted gross income in the column labeled "Percentage B."

BILL ANALYSIS: The bill increases the amount of the credit by 3% above current amounts for applicable individuals listed under "Percentage A" and by 2% for those listed under "Percentage B."

BACKGROUND: G.S. 105-151.11 was put in its current form in 1989 with a uniform percentage of 7% for individuals now listed under the column "Percentage A" and 10% for individuals listed under the "Percentage B" column.

In 1993, the credit was set at current percentages according to filing status and adjusted gross income has not been increased or decreased since that year.

EFFECTIVE DATE: House Bill 1951 is effective for taxable years beginning on or after January 1, 2010.

H1951-SMRG-108(e1) v2

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1951 A BILL TO BE ENTITLED AN ACT TO INCREASE THE CHILD CARE EXPENSES TAX CREDIT.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1714*
Committee Substitute Favorable 5/27/10

Short Title: Suspension and Revocation of Fishing Licenses. (Public)

Sponsors:

Referred to:

May 17, 2010

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE MARINE FISHERIES COMMISSION TO ADOPT RULES RELATED TO THE SUSPENSION, REVOCATION, AND REISSUANCE OF LICENSES AND TO MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

SECTION 1. The Marine Fisheries Commission shall adopt rules pursuant to and consistent with G.S. 113-171, as amended by Section 2 of this act, and G.S. 143B-289.52 for the suspension, revocation, and reissuance of marine resources licenses and permits issued under Articles 14A, 14B, and 25A of Chapter 113 of the General Statutes. Rules adopted pursuant to this section shall not become effective prior to October 1, 2012. In adopting rules pursuant to this section, the Commission shall consider all of the following:

(1) Whether the rules should differentiate between minor and major violations.
(2) How to define minor and major violations.
(3) How service of revocation could be made more efficient.
(4) How the rules should treat violations related to recreational fishing licenses and permits.
(5) Whether violations related to littering or assault on a marine patrol inspector should be treated as grounds for suspension or revocation.
(6) Whether suspension and revocation provisions should be strengthened in cases of harvesting shellfish from polluted waters.

SECTION 2. G.S. 113-171 reads as rewritten:

"**§ 113-171. Suspension, revocation, and reissuance of licenses.**

(a) Upon receipt of reliable notice that a person licensed under this ~~Article~~ Article, Article 14B, or Article 25A of Chapter 113 of the General Statutes to take resources under the jurisdiction of the Marine Fisheries Commission has had imposed against the person a conviction of a criminal offense within the jurisdiction of the Department under the provisions of this Subchapter or of rules of the Commission adopted under the authority of this Subchapter, the Secretary must ~~suspend or revoke~~suspend, revoke, and reissue all licenses held by the person in accordance with the terms of this ~~section.~~section and rules adopted by the Commission. Reliable notice includes information furnished the Secretary in prosecution or other reports from inspectors. As used in this section, a conviction includes a plea of guilty or nolo contendere, any other termination of a criminal prosecution unfavorably to the defendant after jeopardy has attached, or any substitute for criminal prosecution whereby the defendant expressly or impliedly confesses the defendant's guilt. In particular, procedures whereby bond forfeitures are accepted in lieu of proceeding to trial and cases indefinitely continued upon

arrest of judgment or prayer for judgment continued are deemed convictions. The Secretary may act to suspend or revoke licenses upon the basis of any conviction in which:

(1) No notice of appeal has been given;
(2) The time for appeal has expired without an appeal having been perfected; or
(3) The conviction is sustained on appeal. Where there is a new trial, finality of any subsequent conviction will be determined in the manner set out above.

(b) The Secretary must initiate an administrative procedure designed to give the Secretary systematic notice of all convictions of criminal offenses by licensees covered by subsection (a) of this section above and keep a file of all convictions reported. ~~Upon receipt of notice of conviction, the Secretary must determine whether it is a first, a second, a third, or a fourth or subsequent conviction of some offense covered by subsection (a). In the case of second convictions, the Secretary must suspend all licenses issued to the licensee for a period of 10 days. In the case of third convictions, the Secretary must suspend all licenses issued to the licensee for a period of 30 days. In the case of fourth or subsequent convictions, the Secretary must revoke all licenses issued to the licensee. Where several convictions result from a single transaction or occurrence, they are to be treated as a single conviction so far as suspension or revocation of the licenses of any licensee is concerned. Anyone convicted of taking or of knowingly possessing, transporting, buying, selling, or offering to buy or sell oysters or clams from areas closed because of suspected pollution will be deemed by the Secretary to have been convicted of two separate offenses on different occasions for license suspension or revocation purposes.~~

~~(c) Where a license has been suspended or revoked, the former licensee is not eligible to apply for reissuance of license or for any additional license authorized in this Article during the suspension or revocation period. Licenses must be returned to the licensee by the Secretary or the Secretary's agents at the end of a period of suspension. Where there has been a revocation, application for reissuance of license or for an additional license may not be made until six months following the date of revocation. In such case of revocation, the eligible former licensee must satisfy the Secretary that the licensee will strive in the future to conduct the operations for which the license is sought in accord with all applicable laws and rules. Upon the application of an eligible former licensee after revocation, the Secretary, in the Secretary's discretion, may issue one license sought but not another, as deemed necessary to prevent the hazard of recurring violations of the law.~~

~~(d) Upon receiving reliable information of a licensee's conviction of a second or subsequent criminal offense covered by subsection (a) of this section, the Secretary shall promptly cause the licensee to be personally served with written notice of suspension or revocation, as the case may be. The written notice may be served upon any responsible individual affiliated with the corporation, partnership, or association where the licensee is not an individual. The notice of suspension or revocation may be served by an inspector or other agent of the Department, must state the ground upon which it is based, and takes effect immediately upon personal service. The agent of the Secretary making service shall then or subsequently, as may be feasible under the circumstances, collect all license certificates and plates and other forms or records relating to the license as directed by the Secretary. It is unlawful for any licensee willfully to evade the personal service prescribed in this subsection.~~

(e) A licensee served with a notice of suspension or revocation may obtain an administrative review of the suspension or revocation by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice. The only issue in the hearing shall be whether the licensee was convicted of a criminal offense for which a license must be suspended or revoked. A license remains suspended or revoked pending the final decision by the Secretary.

(f) If the Secretary refuses to reissue the license of or issue an additional license to an applicant whose license was revoked, the applicant may contest the decision by filing a petition

for a contested case under G.S. 150B-23 within 20 days after the Secretary makes the decision. The Commission shall make the final agency decision in a contested case under this subsection. An applicant whose license is denied under this subsection may not reapply for the same license for at least six months.

(g) The Commission may adopt rules to provide for the disclosure of the identity of any individual or individuals in responsible positions of control respecting operations of any licensee that is not an individual. For the purposes of this section, individuals in responsible positions of control are deemed to be individual licensees and subject to suspension and revocation requirements in regard to any applications for license they may make – either as individuals or as persons in responsible positions of control in any corporation, partnership, or association. In the case of individual licensees, the individual applying for a license or licensed under this ~~Article~~ Article, Article 14B, or Article 25A of Chapter 113 of the General Statutes to take resources under the jurisdiction of the Marine Fisheries Commission must be the real party in interest.

(h) In determining whether a conviction is a second or subsequent offense under the provisions of this section, the Secretary may not consider convictions for:

(1) Offenses that occurred three years prior to the effective date of this Article; or

(2) Offenses that occurred more than three years prior to the time of the latest offense the conviction for which is in issue as a subsequent conviction."

SECTION 3. Section 2 of this act becomes effective October 1, 2012. The remainder of this act is effective when it becomes law.

HOUSE BILL 1714:
Suspension and Revocation of Fishing Licenses

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	June 8, 2010
Introduced by:	Reps. Wainwright, Spear, Underhill	**Prepared by:**	Susan Sitze*
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 1714 would direct the Marine Fisheries Commission to adopt rules to provide for the suspension, revocation, and reissuance of marine fisheries licenses and make conforming changes.***

House Bill 1714 is a recommendation of the Joint Legislative Commission on Seafood and Aquaculture. House Marine Resources and Aquaculture passed the almost identical House Bill 108 during the 2009 Session.

[As introduced, this bill was identical to S1269, as introduced by Sen. Albertson, which is currently in Senate Agriculture/Environment/Natural Resources.]

CURRENT LAW:

Under current law, the suspension, revocation, and reissuance of commercial fishing licenses is governed by G.S. 113-171. There is no similar law for the suspension, revocation, and reissuance of recreational fishing licenses.

BILL ANALYSIS:

House Bill 1714 would direct the Marine Fisheries Commission to adopt rules for the suspension, revocation, and reissuance of commercial and recreational coastal fishing licenses. Such rules could not become effective prior to October 1, 2012. In adopting the rules, the Commission would consider:

- The existing suspension, revocation, and reissuance statute.
- Whether the rules should differentiate between minor and major violations.
- How to define minor and major violations.
- How service of revocation could be made more efficient.
- How the rules should treat violations related to recreational fishing licenses and permits.
- Whether violations related to littering or assault on a marine patrol inspector should be treated as grounds for suspension or revocation.
- Whether suspension and revocation provisions should be strengthened in cases of harvesting shellfish from polluted waters.

House Bill 1714 would also make conforming changes to the existing suspension, revocation, and reissuance statute, G.S. 113-171.

EFFECTIVE DATE: Except for the conforming changes to G.S. 113-171, which become effective October 1, 2012, this act is effective when it becomes law.

**Jeff Hudson, Staff Attorney, substantially contributed to this summary.*

H1714-SMSA-144(e2) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

HB 1714 A BILL TO BE ENTITLED AN ACT TO DIRECT THE MARINE FISHERIES COMMISSION TO ADOPT RULES RELATED TO THE SUSPENSION, REVOCATION, AND REISSUANCE OF LICENSES AND TO MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

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

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 1698*
Corrected Copy 5/14/10
Committee Substitute Favorable 5/26/10

Short Title: Update Long-Term Care Statutes. (Public)

Sponsors:

Referred to:

May 13, 2010

A BILL TO BE ENTITLED

AN ACT TO UPDATE AND CLARIFY NORTH CAROLINA'S GENERAL STATUTES ON OLDER ADULTS AND LONG-TERM SERVICES AND SUPPORTS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.

Whereas, the North Carolina General Assembly is committed to having North Carolina recognized as a leader in supporting long-term services and supports; and

Whereas, the State is building on the following federal and State supported person-centered initiatives: aging and disability resource centers or Community Resource Connections for Aging and Disabilities, evidence-based health promotion, caregiver supports for persons with Alzheimer's disease, lifespan respite programs, consumer-directed care, transitional care, and promotion of community living for persons who might otherwise become Medicaid eligible if placed in a skilled nursing facility; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Part 14A, Article 3, Chapter 143B of the General Statutes reads as rewritten:

"Part 14A. ~~Policy Act for the Aging.~~ Older Adults.

"**§ 143B-181.3. ~~Statement of principles.~~ Older adults – findings; policy.**

~~To utilize effectively the resources of our State, to provide a better quality of life for our senior citizens, and to assure older adults the right of choosing where and how they want to live, the following principles are hereby endorsed:~~

(a) The North Carolina General Assembly finds the following:

(1) Older ~~people~~ adults should be able to live as ~~normal a life~~ independently as ~~possible.~~ possible, and to live free from abuse, neglect, and exploitation.

(2) Older adults should have opportunities to be involved in their communities in ways they desire.~~a choice of life styles which will allow them to remain contributing members of society for as long as possible.~~

(3) Preventive and primary health care are necessary to ~~keep older adults active and contributing members of society.~~ assure optimal health and to enable active social and civic engagement by older adults.

(4) Sufficient opportunities for ~~Appropriate~~ training in gerontology and geriatrics should be developed and readily available for individuals serving older adults.

(5) ~~Transportation to meet daily needs and to make accessible a broad range of services should be provided so that older persons may realize their full potential.~~Older adults should have access to a broad range of services, supports, and opportunities, and they should have transportation options

available to allow access to these services and to meet their daily needs and interests.

(6) Services for older adults should be person-centered and coordinated so that ~~all their~~ an individual's needs can be ~~served efficiently and effectively.~~met efficiently, effectively, and in the least restrictive environment.

(7) Information should be readily available in each county on all programs and services for older adults. ~~citizens and advocacy for these services should be available in each county.~~

(8) ~~Increased employment opportunities for older adults should be made available.~~Older adults should have adequate opportunities for employment.

(9) Each county should have available a variety of housing options, including retirement housing, accessible affordable rental housing, and opportunities for residential home modifications, in order to allow older adults to remain in their communities. ~~Options in housing should be made available.~~

(10) Older adults and their caregivers should have input in the planning and evaluation of programs and services for older adults, and they should have opportunities to advocate for these programs and services. ~~Planning for programs for older citizens should always be done in consultation with them.~~

(11) The State should ~~aid~~ assist older ~~people~~ adults who desire to remain as independent as possible ~~to help themselves~~ and should encourage and support families in caring for their older members.

(b) It is the policy of the State to effectively utilize its resources to support and enhance the quality of life for older adults in North Carolina."

SECTION 2. Part 14B, Article 3, Chapter 143B of the General Statutes reads as rewritten:

"Part 14B. Long-Term ~~Care.~~Services and Supports.

"§ 143B-181.5. Long-term ~~care~~ services and supports – findings.~~policy.~~

The North Carolina General Assembly finds that the aging of the population and advanced medical technology have resulted in a growing number of persons who require ~~assistance.~~ long-term services and supports. The primary ~~resource~~ resources for long-term ~~care provision~~ assistance continues to be ~~the~~ family and friends. However, these traditional caregivers are increasingly employed outside the home. There is growing demand for improvement and expansion of home and community-based long-term ~~care services to support and~~ services and supports to complement the ~~services~~ care provided by these informal caregivers.

The North Carolina General Assembly further finds that the public interest would best be served by a broad array of long-term ~~care~~ services and supports that ~~support~~ enable persons who need such services to remain in the home or in the community whenever practicable and that promote individual ~~autonomy, dignity, and choice.~~autonomy and dignity as these individuals exercise choice and control over their lives.

The North Carolina General Assembly finds that as other long-term ~~care~~ service and support options become more readily available, the ~~relative~~ need for institutional care will stabilize or decline relative to the growing ~~aging population.~~population of older adults and people living with disabilities. The General Assembly recognizes, however, that institutional care will continue to be a critical part of the State's long-term ~~care~~ service and support options and that such ~~services~~ care should promote individual dignity, autonomy, and a home like environment.

"§ 143B-181.6. Purpose and intent.

~~It is the North Carolina General Assembly's intent in the State's development and implementation of long-term care policies that:~~The development and implementation of policies for long-term services and supports should reflect the intent of the North Carolina General Assembly as follows:

(1) Long-term ~~care~~ services and supports administered by the Department of Health and Human Services and other State and local agencies shall include a balanced array of health, social, and supportive services that are well coordinated to promote individual choice, dignity, and the highest practicable level of ~~independence;~~ independence.

(2) Home and community-based services shall be developed, expanded, or maintained in order to meet the needs of consumers in the least confusing and least restrictive manner. ~~manner and~~ Services should be based on the desires of ~~the elderly~~ older adults, persons with disabilities, ~~and~~ their ~~families;~~families, and others that support them.

(3) All services shall be responsive and appropriate to individual need and shall be delivered through a uniform and seamless system that is flexible and responsive regardless of funding ~~source;~~ source. Information and services shall be available through the effective use of Community Resource Connections for Aging and Disabilities as they are developed throughout the State.

(4) Services shall be available to all ~~elderly~~ persons who need ~~them~~ them, but shall be targeted primarily to ~~the~~ those citizens who are the most ~~frail,~~ frail and those with the greatest need. ~~needy elderly;~~

(5) State and local agencies shall maximize the use of limited resources by establishing a fee system for persons who have the ability to ~~pay;~~pay.

(6) ~~Institutional care~~ Care provided in facilities shall be ~~provided~~ offered in such a manner and in such an environment as to promote for each resident, maintenance of health, ~~or~~ enhancement of the quality of ~~life of each resident~~ life, and timely discharge to a less restrictive care setting when ~~appropriate; and~~ appropriate.

(7) State health planning for institutional bed supply shall take into account increased availability of ~~other~~ home and community-based services options.

(8) In an effort to maximize the use of limited resources, State and local agencies shall invest in supports for families and other informal caregivers of persons requiring assistance.

(9) Emphasis shall be placed on offering evidence-based activities to promote healthy aging, prevent injuries, and manage chronic diseases and conditions.

(10) Individuals and families shall be encouraged and supported in planning for and financing their own future needs for long-term services and supports."

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

HOUSE BILL 1698:
Update Long-Term Care Statutes

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	June 8, 2010
Introduced by:	Reps. Farmer-Butterfield, Pierce, Weiss, England	**Prepared by:**	Tim Hovis* Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 1698 makes changes to the statutory language on aging and long-term care to reflect contemporary descriptions of current programs and services. This bill was a recommendation by the NC Study Commission on Aging.***

[As introduced, this bill was identical to S1190, as introduced by Sen. Swindell, which is currently in Senate Health Care.]

BILL ANALYSIS: Section 1 of HB 1698 amends Part 14A, Article 3, Chapter 143B. Part 14A, "Policy Act for the Aging," was enacted in 1979 and has not been amended since. This section of the bill amends Part 14A, G.S. 143B-181.3 which contains inconsistent and antiquated references to older adults. The amendments to this section also include a reference to person-centered services. The amendments reflect the way the State currently delivers programs and services to older adults.

Section 2 of HB 1698 amends Part 14B, Article 3, Chapter 143B, which was enacted in 1981 and was amended in 1995. Part 14B contains sections G.S. 143B-181.5 and G.S. 143B-181.6. This bill changes references in Part 14B from "long-term care" to "long-term services and support" which is consistent with terminology changes made by the Department of Health and Human Services. This section also references the use of "Community Resource Connections for Aging and Disabilities" which is the title North Carolina has given to their aging and disability resource centers.

House Bill 1698 would become effective when it becomes law.

BACKGROUND: The Division of Aging and Adult Services recommended the changes in this bill.

Person-Centered Services - The Office of Long-Term Services and Supports, Department of Health and Human Services, defines person-centered services and supports as "those that help people establish the right balance between what is important to their day-to-day quality of life and what is important for their health and safety. The person is the expert in his or her own life, and professionals are there to provide support and guidance, but not control."

Aging and disability resource centers were part of a federal grant initiative. Community Resource Connections for Aging and Disabilities (CRC) represents a collaboration of agencies and organizations that link resources within the community and strengthen relationships between existing providers through partnerships and facilitate a "no wrong door" approach to services. The Department states that a, "CRC is considered to be one of the primary vehicles to modernize long-term care systems, particularly in relation to helping people avoid unnecessary institutionalization by supporting individuals of all disabilities and incomes to make informed, cost-effective choices."

*This summary was substantially prepared by Ms. Theresa Matula, Legislative Analyst, Research Division.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

HB 1698 A BILL TO BE ENTITLED AN ACT TO UPDATE AND CLARIFY NORTH CAROLINA'S GENERAL STATUTES ON OLDER ADULTS AND LONG-TERM SERVICES AND SUPPORTS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 1752

Short Title:	E-NC Connectivity/Economic Development Funds.	(Public)
Sponsors:	Representatives Tolson; Bell, Dockham, Faison, Gill, Hughes, McLawhorn, Pierce, Rapp, Spear, Wilkins, and Wray.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Appropriations.	

May 18, 2010

A BILL TO BE ENTITLED

AN ACT APPROPRIATING FUNDS TO THE E-NC AUTHORITY TO SUPPORT CONNECTIVITY INITIATIVES AND TO ADVANCE TECHNOLOGY-BASED ECONOMIC DEVELOPMENT THROUGHOUT THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. Operations, Research, and Coordination. – Under Session Law 2003-425, the e-NC Authority has a mandate to be the Internet planning and policy body for the State. Therefore, there is appropriated from the General Fund to the e-NC Authority the additional sum of five hundred five thousand dollars ($505,000) for the 2010-2011 fiscal year to continue its operational, advocacy, and research functions and assistance to communities for broadband deployment. These funds will be in addition to the four hundred seventy-five thousand two hundred dollars ($475,200) the Authority currently receives from recurring funding from the State budget. These funds will allow the e-NC Authority to continue its efforts statewide in all 100 counties, serving as the primary advocate in North Carolina for universal high-speed Internet access deployment and the economic growth potential possible through expanded broadband, through continuation of the e-NC Authority's operations and its work on technology-based economic development to create jobs in North Carolina.

Since its inception, the e-NC Authority has received three million twenty-one thousand seven hundred five dollars ($3,021,705) in State operating support, creating an economic impact of more than three billion dollars ($3,000,000,000) (using the U.S. Bureau of Economic Analysis metrics) in its work to increase broadband access. It has seen more than 1,906 jobs directly created through the e-NC Business and Technology Telecenters (BTTs) since 2002. In addition to the three billion dollar-impact, the local community impact by the BTTs has been more than two hundred twenty-six million dollars ($226,000,000) in direct revenue impact on the economy of the seven counties where the BTTs are located.

SECTION 2. Connectivity Incentive Grants: State, Federal, and Foundations. – There is appropriated from the General Fund to the e-NC Authority the sum of twelve million five hundred thousand dollars ($12,500,000) for the 2010-2011 fiscal year to be used to make broadband access available to unserved and underserved households in communities in all 100 counties. These funds shall be granted through a formal request for proposals (RFP) process with a provider match required when appropriate. Up to four percent (4%) of this connectivity funding may be designated for grant administration. In addition, these funds may be used by the Authority to assist community, public, private, and nonprofit entities that need to provide a match to receive broadband deployment, adoption, and use funds from any federal grants or the federal broadband stimulus monies available from the federal government or from other foundation grants.

SECTION 3. This act becomes effective July 1, 2010.

HOUSE BILL 1752: E-NC Connectivity/Economic Development Funds

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Appropriations	**Date:**	May 25, 2010
Introduced by:	Rep. Tolson	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1752 appropriates a total of $13,005,000 for the use of the e-NC Authority over the 2010-2011 fiscal year. The bill would provide additional funding for general operations of the Authority, and increase the availability of internet connectivity in underserved areas of the State through incentive grants.

CURRENT LAW: The e-NC Authority is an independent agency within the Department of Commerce. The purpose of the Authority is to manage, oversee, promote, and monitor efforts to provide rural counties and distressed urban areas with high-speed broadband Internet access. The Authority also serves as the central rural and urban distressed areas Internet access policy planning body of the State. The authority is directed by law to communicate and coordinate with State, regional, and local agencies and private entities in order to continue the development and facilitation of a coordinated Internet access policy for the citizens of North Carolina.

BILL ANALYSIS: **Section 1** of the bill appropriates $505,000 to the e-NC Authority for the 2010 fiscal year to continue its operational, advocacy, and research functions and assistance to communities for broadband deployment. **Section 2** of the bill appropriates $12,500,000 to the e-NC Authority for the 2010-2011 fiscal year to fund Connectivity Incentive Grants intended to make broadband access available to unserved and underserved households in communities in all 100 counties. The funds may be used by the Authority to assist community, public, private, and nonprofit entities that need to provide a match to receive broadband deployment, adoption, and use funds from any federal grants or the federal broadband stimulus monies available from the federal government or from other foundation grants.

EFFECTIVE DATE: The bill would become effective July 1, 2010

H1752-SMRV-120(e1) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1752 A BILL TO BE ENTITLED AN ACT APPROPRIATING FUNDS TO THE E-NC AUTHORITY TO SUPPORT CONNECTIVITY INITIATIVES AND TO ADVANCE TECHNOLOGY-BASED ECONOMIC DEVELOPMENT THROUGHOUT THE STATE.

☒ With a favorable report and recommendation that the bill be re-referred to the Committee on APPROPRIATIONS.

(FOR JOURNAL USE ONLY)

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

_____ The bill/resolution is re-referred to the Committee on _____.

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

_____ The bill/resolution is re-referred to the Committee on _____.

HOUSE BILL 2067

Short Title:	Caswell Internet.	(Local)
Sponsors:	Representative Faison.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Public Utilities.	

May 27, 2010

A BILL TO BE ENTITLED

AN ACT TO ALLOW CASWELL COUNTY TO PROVIDE INTERNET SERVICES, AN AUTHORIZED PURPOSE UNDER CABLE TELEVISION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-274 reads as rewritten:

"**§ 153A-274. Public enterprise defined.**

As used in this Article, "public enterprise" includes:

(1) Water supply and distribution systems.

(2) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.

(3) Solid waste collection and disposal systems and facilities.

(4) Airports.

(5) Off-street parking facilities.

(6) Public transportation systems.

(7) 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.

(8) Cable television systems."

SECTION 2. This act applies to Caswell County only.

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

HOUSE BILL 2067: Caswell Internet

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Public Utilities	**Date:**	June 9, 2010
Introduced by:	Rep. Faison	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 2067 is a local act applicable only to Caswell County that would allow the county to operate cable television systems as a public enterprise.

CURRENT LAW: Under Article 15 of Chapter 153A of the General Statutes, counties have the authority to acquire, lease, construct, establish, enlarge, improve, extend, maintain, own, operate, and contract for the operation of public enterprises to furnish certain services to the county and its citizens. Public enterprise includes water supply & distribution systems, solid waste systems, airports, parking facilities, public transportation systems, and stormwater management programs.

BILL ANALYSIS: House Bill 2067 is a local act applicable only to Caswell County that would amend Article 15 of Chapter 153A of the General Statutes concerning public enterprises, by adding a new section authorizing county owned or operated cable television systems.

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

H2067-SMRV-125(e1) v1

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, June 16, 2010

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, June 16, 2010, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, John May, Angela Bryant, Mitch Gillespie, Jim Gulley, Phil Haire, Dewey Hill, Mark Hilton, Sarah Stevens, Joe Tolson and Winkie Wilkins. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Seitz. House Sergeant-at-Arms assisting: John Brandon, Marvin Lee and Earl Coker. House Pages: Melissa Muse of Durham County, Molly Casey of Wilkes County, Daniel Kale of Orange County, Alesia Pope of Forsyth and Stone Faison of Orange County. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. The following bills were placed before the Committee:

Senate Bill 18 - A BILL TO BE ENTITLED: an act to amend the North Carolina cemetery act by requiring proof of a sufficient trust fund or surety bond prior to approving a change of control of a cemetery company, Changing the investments options for Perpetual care trust funds, requiring cemetery companies to list the cost of opening and closing a grave space as part of the contract, prohibiting a cemetery company from requiring a purchaser of a grave space to purchase a vault from a particular seller, increasing the extension that may be given to a cemetery company for completion of construction of mausoleums, Eliminating the ability to post bonds in lieu of deposits to trust accounts, and creating the legislative study commission on the North Carolina cemetery act. The Chair called upon the bill sponsor Sen. Goss to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Representative Alexander offered amendment #1 which is attached hereto and made a part of these minutes. Representative Coates made motion to accept the amendment. Motion passed. Representative Tillis moved that the PCS be adopted as amended (rolled into a PCS) and be re-referred to Judiciary II. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 3*)

House Bill 2067 - A BILL TO BE ENTITLED: an act to allow Caswell County to provide internet services, an authorized purpose under cable television. The Chairman asked Rep. Alexander to Chair the committee while he presented HB 2067.

Representative Tillis offered an amendment. Motion was made to adopt the amendment. The amendment was adopted on a 6-5 vote. Representative May offered amendment #2 which is attached hereto and made a part of these minutes. After discussion the amendment was adopted by the majority. Representative May moved for a favorable report to the PCS, as amended (rolled into a PCS) and a re-refer to Committee on Public Utilities. (Bill, Bill Summary, Amendments & Comm. Report are attached) Attachment-4

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:30 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, June 16, 2010
1:00PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

1.	HB 2067	Caswell Internet.	Representative Faison
2.	SB 18	Amend Cemetery Act.	Senator Goss

4. **Adjourn**

VISITOR REGISTRATION SHEET

Ways & Means / Broadband — 6/16/10

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michael Rubison	Farwest Conservation Alliance for the Triangle
Jimmy Miller	Cemetery Commission
D. Powell	Cemetery Commission
[illegible]	ATT
Lucius Pullen	NC Cemetery Association Counsel/Lobbyist
Rusty Ingram	NCCA
Dana Edson	NCCA
Kevin Howard	Caswell County
Hugh Pace	Verizon
Herb Crenshaw	AT&T
Steve Brewer	Century Link

VISITOR REGISTRATION SHEET

Ways & Means / Broadband — 6/11/10

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pam Melton	CenturyLink
John Merritt	MWC
Bob Welle	North Dole
[illegible]	TWC
Brad Phillips	TWC
Mary Tatten	Brady Pond
[illegible]	Pogram Sprouse

VISITOR REGISTRATION SHEET

Ways & Means / Broadband — 6/16/10

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Penny Griffin	School of Gov.
Cam Cree	BPMHL
Michelle Frazier	MPJS
Ian McArthur	MPJS
John Hawley	MPJS
Paul Stock	NCBA
Amy Fullbright	HEW
Daniel Ammon	Electricities of N.C.
DOUG PARIS	CITY OF SALISBURY
Cathy Rice	Atlantic Data
ay Dirthy	Citizen of Greensboro, NC

VISITOR REGISTRATION SHEET

Ways & Means / Broadband — 6/16/10

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doris Weaver	CWA
Tom Coley	CWA
Thom Mann	Fiber Wire
Piper Leonard	NCACC
Bill Stoddard	TDS
Sam Walker	Rep Kelly Alexander

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 18
Commerce Committee Substitute Adopted 5/12/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S18-CSRV-67 [v.2]

6/15/2010 6:09:49 PM

Short Title: Amend Cemetery Act. (Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CEMETERY ACT BY REQUIRING PROOF OF A SUFFICIENT TRUST FUND OR SURETY BOND PRIOR TO APPROVING A CHANGE OF CONTROL OF A CEMETERY COMPANY, CHANGING THE INVESTMENTS OPTIONS FOR PERPETUAL CARE TRUST FUNDS, REQUIRING CEMETERY COMPANIES TO LIST THE COST OF OPENING AND CLOSING A GRAVE SPACE AS PART OF THE CONTRACT, PROHIBITING A CEMETERY COMPANY FROM REQUIRING A PURCHASER OF A GRAVE SPACE TO PURCHASE A VAULT FROM A PARTICULAR SELLER, INCREASING THE EXTENSION THAT MAY BE GIVEN TO A CEMETERY COMPANY FOR COMPLETION OF CONSTRUCTION OF MAUSOLEUMS, AND CREATING THE LEGISLATIVE STUDY COMMISSION ON THE NORTH CAROLINA CEMETERY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 65-59 reads as rewritten:

"**§ 65-59. Application for a change of control; filing fee.**

A person who proposes to acquire control of an existing cemetery company, whether by purchasing the capital stock of the company, purchasing an owner's interest in the company, or otherwise acting to effectively change the control of the company, shall first make application on a form supplied by the Commission for a certificate of approval of the proposed change of control. The application shall contain the name and address of each proposed new owner. The Commission shall issue a certificate of approval only after it determines that the proposed new owners are qualified by character, experience, and financial responsibility to control and operate the cemetery company in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in control. An application for approval of a change of control must be completed and accompanied by a filing fee to be set by the Commission in an amount not to exceed one thousand six hundred dollars ($1,600). The Commission shall not approve any change of control until the applicant has provided sufficient evidence that any trust account required under G.S. 65-66(b) and G.S. 65-70(b) is maintained and funded in the required amount. If the cemetery company posted a performance bond in lieu of any trust account required under G.S. 65-66(b) and G.S. 65-70(b), then the Commission shall not approve any change of control until the applicant has provided sufficient evidence that the performance bond is being appropriately maintained and in an amount sufficient to cover all

payments made directly or indirectly by or on account of purchasers who have not received the purchased property and services."

SECTION 2. G.S. 65-60.1(e) reads as rewritten:

"(e) Any trustee shall invest and reinvest cemetery trust funds in the same manner as provided by law for the investment of trust funds by the clerk of the superior court; provided, however, that this subsection does not apply to a perpetual trust fund described in G.S. 65-64 or ~~that~~ cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to ~~G.S. 65-64(e)~~G.S. 65-64(e), which may be invested and reinvested in accordance with ~~G.S. 36A-2.~~G.S. 32-71."

SECTION 3. G.S. 65-64 reads as rewritten:

"**§ 65-64. Deposits to perpetual care fund.**

(a) Deposits to the care and maintenance trust fund must be made by the cemetery company holding title to the subject cemetery lands on or before the last day of the calendar month following the calendar month in which final payment is received as provided herein; however the entire amount required to be deposited into the fund shall be paid within four years from the date of any contract requiring ~~such~~ the payment regardless of whether all amounts have been received by the cemetery company. If the cemetery company fails to make timely deposit, the Commission may levy and collect a late filing fee of one dollar ($1.00) per day for each day the deposit is delinquent on each grave space, niche or mausoleum crypt sold. The care and maintenance trust fund shall be invested and reinvested by the trustee in accordance with G.S. 32-71. ~~the same manner as provided by law for the investment of other trust funds by the clerk of the superior court except that such investments may be made through means of a common trust fund as described in G.S. 36A-90; provided, further, that cemetery~~ Investments may be made through means of a common trust fund as described in G.S. 53-163.5. Cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e) may be invested and reinvested in accordance with ~~G.S. 36A-2.~~G.S. 32-71. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and may not be paid from the corpus. To the extent that the ~~said~~ net income is not sufficient to pay ~~such~~ the fees and other expenses, the ~~same~~ fees and other expenses shall be paid by the cemetery company.

(b) When a municipal, church-owned or fraternal cemetery converts to a private cemetery as defined in G.S. 65-48, then ~~said~~ the cemetery shall establish and maintain a care and maintenance trust fund pursuant to this section; provided, however, the initial deposit for establishment of this trust fund shall be an amount equal to fifty dollars ($50.00) per space for all spaces either previously sold or contracted for sale in ~~said~~ the cemetery at the time of conversion or fifty thousand dollars ($50,000), whichever sum is greater.

(c) Repealed by 1991 (Regular Session, 1992), c. 1007, s. 35.

(d) In each sales contract, reservation or agreement wherein burial rights are priced separately, the purchase price of ~~said~~ the burial rights shall be the only item subject to care and maintenance trust fund deposits; but if the burial rights are not priced separately therein, the full amount of the contract, reservations or agreement shall be subject to care and maintenance trust fund deposits as provided herein, unless the purchase price of ~~said~~ the burial rights can be determined from the accounting records of the cemetery company.

(e) When the amount deposited in the perpetual care fund required by this Article of any cemetery company shall amount to one hundred fifty thousand dollars ($150,000), anything in this Article to the contrary notwithstanding, the cemetery company may make all deposits thereafter either into the original perpetual care trust fund or into a separate fund established as an irrevocable trust, designated as Perpetual Care Trust Fund "A," and invested by the trustee, in accordance with ~~G.S. 36A-2, as directed by the cemetery company.~~G.S. 32-71. Funds in a trust fund designated as Trust Fund "A" may not be invested in another cemetery company.

(f) For special endowments for a specific lot, grave, or a family mausoleum, memorial, marker, or monument, the cemetery may set aside the full amounts received for this individual special care in a separate trust or by a deposit to a savings account in a bank or savings and loan association located within and authorized to do business in the State; provided, however, if the licensee does not set up a separate trust or savings account for the special endowment the full amount thereof shall be deposited in Perpetual Care Trust Fund 'A.'"

SECTION 4. G.S. 65-66 reads as rewritten:

"**§ 65-66. Receipts from sale of personal property or services; trust account; penalties.**

(a) It shall be deemed contrary to public policy if any person or legal entity receives, holds, controls or manages funds or proceeds received from the sale of, or from a contract to sell, personal property or services which may be used in a cemetery in connection with the burial of or the commemoration of the memory of a deceased human being, where payments for the same are made either outright or on an installment basis prior to the demise of the person or persons so purchasing them or for whom they are so purchased, unless ~~such~~ the person or legal entity holds, controls or manages ~~said~~ the funds, subject to the limitations and regulations prescribed in this section. This section shall apply to all cemetery companies or other legal entities that offer for sale or sell personal property or services which may be used in a cemetery in connection with the burial of, or the commemoration of the memory of, a deceased human being, but shall exclude persons holding a license under Article 13D of Chapter 90 of the General Statutes.

(b) Any cemetery company or other entity entering into a contract for the sale of personal property or services, to be used in a cemetery in connection with disposing of, or commemorating the memory of a deceased human being wherein the use of the personal property or the furnishing of services is not immediately requested or required, shall comply with the following requirements and conditions:

(1) The cemetery company or other entity shall deposit an amount equal to sixty percent (60%) of all proceeds received on ~~such~~ the contracts into a trust account, either in the form of an account governed by a trust agreement and handled by a corporate trustee or in the form of a passbook savings account, certificates of deposit for time certificates, ~~and/or~~or money-market certificates with a licensed and insured bank or savings institution located in the State of North Carolina until the amount deposited equals sixty percent (60%) of the actual sale price of the property or services sold. ~~Such~~ The accounts ~~and/or~~ or deposits or both shall be in the name of the cemetery company or other entity in a form which will permit withdrawals only with the participation and consent of the Cemetery Commission as required by subdivision (4) of this subsection.

(2) All funds received on account of a contract for the sale of ~~such~~ the personal property or services, whether the funds be received directly from the purchaser or from the sale or assignment of notes entered into by the purchase or otherwise, shall be deposited into the trust account as required by subdivision (1) of this ~~section.~~subsection.

(3) All deposits required herein shall be made into the trust account so established on or before the last day of the month following receipt of the funds by the cemetery company or other entity.

(4) Withdrawals from a trust account may be made by the depositor, but only with the written approval of the Commission or officer or employee of the Commission authorized to act for the Commission. Withdrawals may be made only upon delivery of the merchandise or services for which the funds were deposited, cancellation of a contract, the presence of excess funds in the trust account, or under other circumstances deemed appropriate by the

Commission. The Commission shall promulgate rules and regulations governing withdrawals from trust accounts, including time and frequency of withdrawals, payments that will be made with the withdrawals, notice to the Commission prior to withdrawals, the number and identity of persons other than the owner who are authorized by the owner to make withdrawals, the officers and employees of the Commission authorized to approve withdrawals, and any other matters necessary to implement the provisions of this subdivision. Withdrawals will not be allowed if the amount remaining in the trust account would fall below sixty percent (60%) of all proceeds received on account of contracts for the sale of ~~such~~ the personal property or services.

(5) If for any reason a cemetery company or other entity who has entered into a contract for the sale of personal property or services cannot or does not provide the personal property or perform the services called for by the contract after request in writing to do so, the purchaser or his heirs or assigns or duly authorized representative shall be entitled to receive the entire amount paid on the contract and any income if any, earned thereon by the trust account.

(6) Every year after September 1, 1975, the cemetery company, the trustee or other entity shall within 75 days after the end of the calendar year, file a financial report of the trust funds with the Commission, setting forth the principal thereof, the investments and payments made, the income earned and disbursed; provided, however, that the Commission may require the cemetery, trustee, or other entity to make ~~such~~ the additional financial reports as it may deem advisable.

(c) Whenever a contract for the sale of personal property ~~and/or~~ or services or both allocates payments to apply to one item at a time under a specific schedule, the contract shall be considered divisible. Title to each item of personal property or the right to each item of services shall pass to the purchaser upon full payment for that item regardless of the remaining balance on other items under the same contract.

(d) Any contract for the sale of personal property ~~and/or~~ or services or both shall state separate costs for each item of personal property, for each act of installation required by the contract, for opening and closing each grave space, and for each other item of services included in the contract.

(e) All contracts for the sale of personal property ~~and/or~~ or services or both must be printed in type size as required by the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and regulations adopted pursuant to that act.

(f) In the event of prepayment, interest charged shall be no more than the interest earned on the unpaid balance computed on a percent per month basis for each month or part of a month up to the date of final payment. Any excess interest which has been paid by the purchaser must be refunded to him, his assigns, or his representative within 30 days after the final payment. No penalty or additional charge for prepayment may be required.

(g) In lieu of the deposits required under subsection (b) of this section, the cemetery company or other entity may post with the Commission a good and sufficient performance bond by surety company licensed to do business in North Carolina and in an amount sufficient to cover all payments made directly or indirectly by or on account of purchasers who have not received the purchased property and services. Money received from the sale or assignment of notes entered into by the purchasers, or otherwise, shall be treated as payments made by the purchasers.

(h) The Commission shall have the power and is required from time to time as it may deem necessary to examine the business of any cemetery company or other entity writing

contracts for the sale of the property or services as herein contemplated. The written report of ~~such~~ the examination shall be filed in the office of the Commission. Any person or entity being examined shall produce the records of the company needed for ~~such~~ the examination.

(i) Any provision of any contract for the sale of the personal property or the performance of services herein contemplated under which the purchaser or beneficiary waives any of the provisions of this section shall be void.

(j) Repealed by Session Laws 1991, c. 653, s. 7.

(k) Nothing in this section shall apply to persons or legal entities holding licenses under Article 13D of Chapter 90 of the General Statutes when engaging in activities for which a license is required under that Article.

(l) If any report is not received within the time stipulated by the Commission or herein, the Commission may levy and collect a late filing fee of twenty-five dollars ($25.00) per month for each month of delinquency.

(m) Within 30 days following the execution of a contract for the sale of personal property or performance of services, a purchaser may cancel his contract by giving written notice to the seller. The seller may cancel the contract, upon default by purchaser, by giving written notice to the purchaser. Within 30 days of notice of cancellation, the cemetery company or other entity shall refund to purchaser the principal amount on deposit in the trust account for his benefit on any undelivered merchandise or services. This amount (no other obligations owed the purchaser by the seller) shall constitute the purchaser's entire entitlements under the contract. The seller may not terminate the contract without complying with this subsection.

(n) A cemetery company shall not require the purchaser or consumer of a grave space, mausoleum, or mausoleum section to purchase a vault from the cemetery company or from any other particular seller of vaults as a condition to the purchase or use of a grave space, mausoleum, or mausoleum section but may require that a casket be enclosed within a vault. A cemetery company may charge a reasonable fee not to exceed twenty dollars ($20.00) for delivery of vaults or inspection of vaults that are purchased from a person other than the cemetery company."

SECTION 5. G.S. 65-70 reads as rewritten:

"**§ 65-70. Construction of mausoleums and belowground crypts; trust fund for receipts from sale of preconstruction crypts; compliance requirements.**

(a) A cemetery company shall be required to start construction of that section of a mausoleum or bank of belowground crypts in which sales, contracts for sale, reservations for sales or agreements for sales are being made, within 48 months after the date of the first ~~such~~ sale. The construction of ~~such~~ the mausoleum section or bank of belowground crypts shall be completed within five years after the date of the first sale made; provided, however, extensions for completion, not to exceed ~~one year~~,three years, may be granted by the Commission for good reasons shown.

(b) A cemetery company which plans to offer for sale space in a section of a mausoleum or bank of underground crypts prior to its construction shall establish a preconstruction trust account. The trust account shall be administered and operated in the same manner as the merchandise trust account provided for in G.S. 65-66 and shall be exclusive of the merchandise trust account or ~~such~~ the other trust accounts or funds that may be required by law. The personal representative of any purchaser of ~~such~~ the space who dies before completion of construction shall be entitled to a refund of all moneys paid for ~~such~~ the space including any income earned thereon.

(c) Before a sale, contract for sale, reservation for sale or agreement for sale in the first mausoleum section or bank of underground crypts in each cemetery may be made the funds (one hundred twenty percent (120%) of construction cost) to be deposited to the preconstruction trust account shall be computed as to ~~said~~ the section or bank of crypts and ~~such~~ the trust account payments must be made on or before the last day of the calendar month

following receipt by the cemetery company or its agent of each payment. The trust account portion of each ~~such~~ payment shall be computed by dividing the cost of the project plus twenty percent (20%) of ~~said~~ the cost, as computed by a licensed contractor, engineer or architect by the number of crypts in the section or bank of crypts to ascertain the cost per unit. The unit cost shall be divided by the contract sales price of each unit to obtain a percentage which shall be multiplied by the amount of each payment. The formula shall be computed as follows:

Cost plus twenty percent (20%) divided by number of crypts = cost per unit

Cost per unit divided by contract sales price = percentage

Percentage x payment received = deposit required to preconstruction trust account.

(d) The cemetery company shall be entitled to withdraw the funds from ~~said~~ the preconstruction trust account only after the Commission has become satisfied that construction has been completed; provided, however, that during construction of the mausoleum or bank of belowground crypts the Commission may, in its discretion, authorize a specific percentage of the funds to be withdrawn when it appears that at least an equivalent percentage of construction has been completed.

(e) If a mausoleum section or bank of underground crypts is not completed within the time limits set out in this section the corporate trustee, if any, shall contract for and cause ~~said~~ the project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company. In the event there is no corporate trustee, the Commission shall appoint a committee to serve as trustees to contract for and cause ~~said~~ the project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company.

(f) In lieu of the payments outlined hereunder to the preconstruction trust account the cemetery company may deliver to the Commission a good and sufficient completion or performance bond in an amount and by surety companies acceptable to the Commission."

SECTION 6.(a) There is created the Legislative Study Commission on the North Carolina Cemetery Act to study issues related to the regulation of cemeteries under the Act.

SECTION 6.(b) The Commission shall consist of 10 members as follows:

(1) Five members appointed by the Speaker of the House of Representatives.

(2) Five members appointed by the President Pro Tempore of the Senate.

SECTION 6.(c) The President Pro Tempore of the Senate shall designate one Senator as cochair and the Speaker of the House of Representatives shall designate one Representative as cochair. Vacancies on the Commission shall be filled by the same appointing authority that made the initial appointment.

SECTION 6.(d) The Commission shall study the following issues relating to the North Carolina Cemetery Act:

(1) Membership of the Cemetery Commission.

(2) Powers and duties of the Cemetery Commission, including:

a. The Commission's authority to investigate and address consumer complaints.

b. The Commission's authority and responsibilities with regard to approval of a proposed change of control pursuant to G.S. 65-59.

(3) Qualifications of trustees for cemetery funds.

(4) Security of trust accounts maintained by cemetery companies.

(5) Adequacy of trust accounts maintained by cemetery companies, the adequacy of bonds posted in lieu thereof, and whether there should be any additional options in lieu of maintaining trust accounts.

(6) Bond requirements.

(7) Qualified bond companies.

(8) Ways to ensure proper maintenance and funding of trust accounts and performance bonds as a condition for approval of a change of control under G.S. 65-59.

(9) Protection for consumers who die before final payment is collected on a preneed contract.

(10) Any other matters the Commission deems appropriate.

SECTION 6.(e) The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The Senate's and the House of Representatives' Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. If the Commission hires a consultant, the consultant shall not be a State employee or a person currently under contract with the State to provide services.

All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

SECTION 6.(f) The Commission shall report the results of its study and its recommendations to the 2011 General Assembly upon its convening, and the Commission shall terminate upon the filing of its report.

SECTION 7. Sections 1 through 5 of this act become effective October 1, 2010. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 18

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

S18-ARV-38 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S18-CSRV-67[v.3]

Date _____,2010

Representative _____

moves to amend the bill on page 7, lines 15-16 by rewriting those lines to read:

"(1) Five members appointed by the Speaker of the House of Representatives. At least one of the appointees shall represent the interests of consumers, and shall have no vested interest in the death care industry. At least one of the appointees shall be a person who resides in Western North Carolina.

(2) Five members appointed by the President Pro Tempore of the Senate. At least one of the appointees shall represent the interests of consumers, and shall have no vested interest in the death care industry. At least one of the appointees shall be a person who resides in Eastern North Carolina.";

and on page 7, line 41-42 by rewriting those lines to read:

"(10) Establishment of a consumer recovery fund to protect consumers from cemetery insolvency and/or fraud.

(11) Establishing trust accounts in the names of individual consumers.

(12) Any other matters the Commission deems appropriate.

SECTION 6.(e) The Executive Director of the Cemetery Commission and the Executive Director of the N.C. Board of Funeral Service shall assist the Commission in its work. The Commission, while in the discharge of its official duties, may"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 18
Commerce Committee Substitute Adopted 5/12/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S18-CSRV-67 [v.3]

6/16/2010 11:11:28 AM

Short Title: Amend Cemetery Act. (Public)

Sponsors:

Referred to:

February 2, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CEMETERY ACT BY REQUIRING PROOF OF A SUFFICIENT TRUST FUND OR SURETY BOND PRIOR TO APPROVING A CHANGE OF CONTROL OF A CEMETERY COMPANY, CHANGING THE INVESTMENTS OPTIONS FOR PERPETUAL CARE TRUST FUNDS, REQUIRING CEMETERY COMPANIES TO LIST THE COST OF OPENING AND CLOSING A GRAVE SPACE AS PART OF THE CONTRACT, PROHIBITING A CEMETERY COMPANY FROM REQUIRING A PURCHASER OF A GRAVE SPACE TO PURCHASE A VAULT FROM A PARTICULAR SELLER, INCREASING THE EXTENSION THAT MAY BE GIVEN TO A CEMETERY COMPANY FOR COMPLETION OF CONSTRUCTION OF MAUSOLEUMS, AND CREATING THE LEGISLATIVE STUDY COMMISSION ON THE NORTH CAROLINA CEMETERY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 65-59 reads as rewritten:

"**§ 65-59. Application for a change of control; filing fee.**

A person who proposes to acquire control of an existing cemetery company, whether by purchasing the capital stock of the company, purchasing an owner's interest in the company, or otherwise acting to effectively change the control of the company, shall first make application on a form supplied by the Commission for a certificate of approval of the proposed change of control. The application shall contain the name and address of each proposed new owner. The Commission shall issue a certificate of approval only after it determines that the proposed new owners are qualified by character, experience, and financial responsibility to control and operate the cemetery company in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in control. An application for approval of a change of control must be completed and accompanied by a filing fee to be set by the Commission in an amount not to exceed one thousand six hundred dollars ($1,600). The Commission shall not approve any change of control until the applicant has provided sufficient evidence that any trust account required under G.S. 65-66(b) and G.S. 65-70(b) is maintained and funded in the required amount. If the cemetery company posted a performance bond in lieu of any trust account required under G.S. 65-66(b) and G.S. 65-70(b), then the Commission shall not approve any change of control until the applicant has provided sufficient evidence that the performance bond is being appropriately maintained and in an amount sufficient to cover all

payments made directly or indirectly by or on account of purchasers who have not received the purchased property and services."

SECTION 2. G.S. 65-60.1 reads as rewritten:

"§ 65-60.1. Trustees; qualifications; examination of records; enforcement.

(a) The term "corporate trustee" as used in this Article shall mean ~~either a bank~~ a bank, credit union, or trust company authorized to do business in North Carolina under the supervision of the Commissioner of ~~Banks~~ Banks, Credit Union Administrator or any other corporate entity; provided that any corporate entity other than a ~~bank~~ bank, credit union, or trust company which acts as trustee under this Article shall first be approved by the Cemetery Commission and shall be subject to supervision by the Cemetery Commission as provided herein.

(b) Any corporate entity, other than a ~~bank~~ bank, credit union, or trust company, which desires to act as trustee for cemetery funds under this Article shall make application to the Commission for approval. The Commission shall approve the trustee when it has become satisfied that:

(1) The applicant employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others.

(2) The applicant will perform its duties in a proper and legal manner and the trust funds and interest of the public generally will not be jeopardized.

(3) The applicant will act as trustee for cemetery funds which will exceed five hundred thousand dollars ($500,000) in the aggregate.

(4) The applicant is authorized to do business in North Carolina and has adequate facilities to perform its duties as trustee.

(c) Any trustee under this Article, other than a ~~bank~~ bank, credit union, or trust company under the supervision of the Commissioner of Banks, shall maintain records relative to cemetery trust funds as the Commission may by regulation prescribe. The records shall be available at the trustee's place of business in North Carolina and shall be available at all reasonable times for examination by a representative of the Commission. The records shall be audited annually, within 90 days from the end of the trust fund's fiscal year, by an independent certified public accountant, and a copy of the audit report shall be promptly forwarded to the Commission.

(d) Whenever it appears that an officer, director, or employee of a trustee, other than a ~~bank~~ bank, credit union, or trust company, is dishonest, incompetent, or reckless in the management of a cemetery trust fund, the Commission may bring an action in the courts to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

(e) Any trustee shall invest and reinvest cemetery trust funds in the same manner as provided by law for the investment of trust funds by the clerk of the superior court; provided, however, that this subsection does not apply to a perpetual trust fund described in G.S. 65-64 or ~~that~~ cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to ~~G.S. 65-64(e)~~G.S. 65-64(e), which may be invested and reinvested in accordance with ~~G.S. 36A-2.~~G.S. 32-71."

SECTION 3. G.S. 65-64 reads as rewritten:

"§ 65-64. Deposits to perpetual care fund.

(a) Deposits to the care and maintenance trust fund must be made by the cemetery company holding title to the subject cemetery lands on or before the last day of the calendar month following the calendar month in which final payment is received as provided herein; however the entire amount required to be deposited into the fund shall be paid within four years from the date of any contract requiring ~~such~~ the payment regardless of whether all amounts have been received by the cemetery company. If the cemetery company fails to make timely

deposit, the Commission may levy and collect a late filing fee of one dollar ($1.00) per day for each day the deposit is delinquent on each grave space, niche or mausoleum crypt sold. The care and maintenance trust fund shall be invested and reinvested by the trustee in accordance with G.S. 32-71. ~~the same manner as provided by law for the investment of other trust funds by the clerk of the superior court except that such investments may be made through means of a common trust fund as described in G.S. 36A-90; provided, further, that cemetery~~ Investments may be made through means of a common trust fund as described in G.S. 53-163.5. Cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e) may be invested and reinvested in accordance with ~~G.S. 36A-2.~~G.S. 32-71. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and may not be paid from the corpus. To the extent that the ~~said~~ net income is not sufficient to pay ~~such~~ the fees and other expenses, the ~~same~~ fees and other expenses shall be paid by the cemetery company.

(b) When a municipal, church-owned or fraternal cemetery converts to a private cemetery as defined in G.S. 65-48, then ~~said~~ the cemetery shall establish and maintain a care and maintenance trust fund pursuant to this section; provided, however, the initial deposit for establishment of this trust fund shall be an amount equal to fifty dollars ($50.00) per space for all spaces either previously sold or contracted for sale in ~~said~~ the cemetery at the time of conversion or fifty thousand dollars ($50,000), whichever sum is greater.

(c) Repealed by 1991 (Regular Session, 1992), c. 1007, s. 35.

(d) In each sales contract, reservation or agreement wherein burial rights are priced separately, the purchase price of ~~said~~ the burial rights shall be the only item subject to care and maintenance trust fund deposits; but if the burial rights are not priced separately therein, the full amount of the contract, reservations or agreement shall be subject to care and maintenance trust fund deposits as provided herein, unless the purchase price of ~~said~~ the burial rights can be determined from the accounting records of the cemetery company.

(e) When the amount deposited in the perpetual care fund required by this Article of any cemetery company shall amount to one hundred fifty thousand dollars ($150,000), anything in this Article to the contrary notwithstanding, the cemetery company may make all deposits thereafter either into the original perpetual care trust fund or into a separate fund established as an irrevocable trust, designated as Perpetual Care Trust Fund "A," and invested by the trustee, in accordance with ~~G.S. 36A-2, as directed by the cemetery company.~~G.S. 32-71. Funds in a trust fund designated as Trust Fund "A" may not be invested in another cemetery company.

(f) For special endowments for a specific lot, grave, or a family mausoleum, memorial, marker, or monument, the cemetery may set aside the full amounts received for this individual special care in a separate trust or by a deposit to a savings account in a ~~bank~~ bank, credit union, or savings and loan association located within and authorized to do business in the State; provided, however, if the licensee does not set up a separate trust or savings account for the special endowment the full amount thereof shall be deposited in Perpetual Care Trust Fund 'A.'"

SECTION 4. G.S. 65-66 reads as rewritten:

"**§ 65-66. Receipts from sale of personal property or services; trust account; penalties.**

(a) It shall be deemed contrary to public policy if any person or legal entity receives, holds, controls or manages funds or proceeds received from the sale of, or from a contract to sell, personal property or services which may be used in a cemetery in connection with the burial of or the commemoration of the memory of a deceased human being, where payments for the same are made either outright or on an installment basis prior to the demise of the person or persons so purchasing them or for whom they are so purchased, unless ~~such~~ the person or legal entity holds, controls or manages ~~said~~ the funds, subject to the limitations and regulations prescribed in this section. This section shall apply to all cemetery companies or other legal entities that offer for sale or sell personal property or services which may be used in a cemetery in connection with the burial of, or the commemoration of the memory of, a

deceased human being, but shall exclude persons holding a license under Article 13D of Chapter 90 of the General Statutes.

(b) Any cemetery company or other entity entering into a contract for the sale of personal property or services, to be used in a cemetery in connection with disposing of, or commemorating the memory of a deceased human being wherein the use of the personal property or the furnishing of services is not immediately requested or required, shall comply with the following requirements and conditions:

(1) The cemetery company or other entity shall deposit an amount equal to sixty percent (60%) of all proceeds received on ~~such~~ the contracts into a trust account, either in the form of an account governed by a trust agreement and handled by a corporate trustee or in the form of a passbook savings account, certificates of deposit for time certificates, ~~and/or~~or money-market certificates with a licensed and insured ~~bank~~ bank, credit union, or savings institution located in the State of North Carolina until the amount deposited equals sixty percent (60%) of the actual sale price of the property or services sold. ~~Such~~ The accounts ~~and/or~~ or deposits or both shall be in the name of the cemetery company or other entity in a form which will permit withdrawals only with the participation and consent of the Cemetery Commission as required by subdivision (4) of this subsection.

(2) All funds received on account of a contract for the sale of ~~such~~ the personal property or services, whether the funds be received directly from the purchaser or from the sale or assignment of notes entered into by the purchase or otherwise, shall be deposited into the trust account as required by subdivision (1) of this ~~section.~~subsection.

(3) All deposits required herein shall be made into the trust account so established on or before the last day of the month following receipt of the funds by the cemetery company or other entity.

(4) Withdrawals from a trust account may be made by the depositor, but only with the written approval of the Commission or officer or employee of the Commission authorized to act for the Commission. Withdrawals may be made only upon delivery of the merchandise or services for which the funds were deposited, cancellation of a contract, the presence of excess funds in the trust account, or under other circumstances deemed appropriate by the Commission. The Commission shall promulgate rules and regulations governing withdrawals from trust accounts, including time and frequency of withdrawals, payments that will be made with the withdrawals, notice to the Commission prior to withdrawals, the number and identity of persons other than the owner who are authorized by the owner to make withdrawals, the officers and employees of the Commission authorized to approve withdrawals, and any other matters necessary to implement the provisions of this subdivision. Withdrawals will not be allowed if the amount remaining in the trust account would fall below sixty percent (60%) of all proceeds received on account of contracts for the sale of ~~such~~ the personal property or services.

(5) If for any reason a cemetery company or other entity who has entered into a contract for the sale of personal property or services cannot or does not provide the personal property or perform the services called for by the contract after request in writing to do so, the purchaser or his heirs or assigns or duly authorized representative shall be entitled to receive the entire amount paid on the contract and any income if any, earned thereon by the trust account.

(6) Every year after September 1, 1975, the cemetery company, the trustee or other entity shall within 75 days after the end of the calendar year, file a financial report of the trust funds with the Commission, setting forth the principal thereof, the investments and payments made, the income earned and disbursed; provided, however, that the Commission may require the cemetery, trustee, or other entity to make ~~such~~ the additional financial reports as it may deem advisable.

(c) Whenever a contract for the sale of personal property ~~and/or~~ or services or both allocates payments to apply to one item at a time under a specific schedule, the contract shall be considered divisible. Title to each item of personal property or the right to each item of services shall pass to the purchaser upon full payment for that item regardless of the remaining balance on other items under the same contract.

(d) Any contract for the sale of personal property ~~and/or~~ or services or both shall state separate costs for each item of personal property, for each act of installation required by the contract, for opening and closing each grave space, and for each other item of services included in the contract.

(e) All contracts for the sale of personal property ~~and/or~~ or services or both must be printed in type size as required by the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and regulations adopted pursuant to that act.

(f) In the event of prepayment, interest charged shall be no more than the interest earned on the unpaid balance computed on a percent per month basis for each month or part of a month up to the date of final payment. Any excess interest which has been paid by the purchaser must be refunded to him, his assigns, or his representative within 30 days after the final payment. No penalty or additional charge for prepayment may be required.

(g) In lieu of the deposits required under subsection (b) of this section, the cemetery company or other entity may post with the Commission a good and sufficient performance bond by surety company licensed to do business in North Carolina and in an amount sufficient to cover all payments made directly or indirectly by or on account of purchasers who have not received the purchased property and services. Money received from the sale or assignment of notes entered into by the purchasers, or otherwise, shall be treated as payments made by the purchasers.

(h) The Commission shall have the power and is required from time to time as it may deem necessary to examine the business of any cemetery company or other entity writing contracts for the sale of the property or services as herein contemplated. The written report of ~~such~~ the examination shall be filed in the office of the Commission. Any person or entity being examined shall produce the records of the company needed for ~~such~~ the examination.

(i) Any provision of any contract for the sale of the personal property or the performance of services herein contemplated under which the purchaser or beneficiary waives any of the provisions of this section shall be void.

(j) Repealed by Session Laws 1991, c. 653, s. 7.

(k) Nothing in this section shall apply to persons or legal entities holding licenses under Article 13D of Chapter 90 of the General Statutes when engaging in activities for which a license is required under that Article.

(l) If any report is not received within the time stipulated by the Commission or herein, the Commission may levy and collect a late filing fee of twenty-five dollars ($25.00) per month for each month of delinquency.

(m) Within 30 days following the execution of a contract for the sale of personal property or performance of services, a purchaser may cancel his contract by giving written notice to the seller. The seller may cancel the contract, upon default by purchaser, by giving written notice to the purchaser. Within 30 days of notice of cancellation, the cemetery company or other entity shall refund to purchaser the principal amount on deposit in the trust account for

his benefit on any undelivered merchandise or services. This amount (no other obligations owed the purchaser by the seller) shall constitute the purchaser's entire entitlements under the contract. The seller may not terminate the contract without complying with this subsection.

(n) A cemetery company shall not require the purchaser or consumer of a grave space, mausoleum, or mausoleum section to purchase a vault from the cemetery company or from any other particular seller of vaults as a condition to the purchase or use of a grave space, mausoleum, or mausoleum section but may require that a casket be enclosed within a vault. A cemetery company may charge a reasonable fee not to exceed twenty dollars ($20.00) for delivery of vaults or inspection of vaults that are purchased from a person other than the cemetery company."

SECTION 5. G.S. 65-70 reads as rewritten:

"**§ 65-70. Construction of mausoleums and belowground crypts; trust fund for receipts from sale of preconstruction crypts; compliance requirements.**

(a) A cemetery company shall be required to start construction of that section of a mausoleum or bank of belowground crypts in which sales, contracts for sale, reservations for sales or agreements for sales are being made, within 48 months after the date of the first ~~such~~ sale. The construction of ~~such~~ the mausoleum section or bank of belowground crypts shall be completed within five years after the date of the first sale made; provided, however, extensions for completion, not to exceed ~~one year,~~three years, may be granted by the Commission for good reasons shown.

(b) A cemetery company which plans to offer for sale space in a section of a mausoleum or bank of underground crypts prior to its construction shall establish a preconstruction trust account. The trust account shall be administered and operated in the same manner as the merchandise trust account provided for in G.S. 65-66 and shall be exclusive of the merchandise trust account or ~~such~~ the other trust accounts or funds that may be required by law. The personal representative of any purchaser of ~~such~~ the space who dies before completion of construction shall be entitled to a refund of all moneys paid for ~~such~~ the space including any income earned thereon.

(c) Before a sale, contract for sale, reservation for sale or agreement for sale in the first mausoleum section or bank of underground crypts in each cemetery may be made the funds (one hundred twenty percent (120%) of construction cost) to be deposited to the preconstruction trust account shall be computed as to ~~said~~ the section or bank of crypts and ~~such~~ the trust account payments must be made on or before the last day of the calendar month following receipt by the cemetery company or its agent of each payment. The trust account portion of each ~~such~~ payment shall be computed by dividing the cost of the project plus twenty percent (20%) of ~~said~~ the cost, as computed by a licensed contractor, engineer or architect by the number of crypts in the section or bank of crypts to ascertain the cost per unit. The unit cost shall be divided by the contract sales price of each unit to obtain a percentage which shall be multiplied by the amount of each payment. The formula shall be computed as follows:

Cost plus twenty percent (20%) divided by number of crypts = cost per unit

Cost per unit divided by contract sales price = percentage

Percentage x payment received = deposit required to preconstruction trust account.

(d) The cemetery company shall be entitled to withdraw the funds from ~~said~~ the preconstruction trust account only after the Commission has become satisfied that construction has been completed; provided, however, that during construction of the mausoleum or bank of belowground crypts the Commission may, in its discretion, authorize a specific percentage of the funds to be withdrawn when it appears that at least an equivalent percentage of construction has been completed.

(e) If a mausoleum section or bank of underground crypts is not completed within the time limits set out in this section the corporate trustee, if any, shall contract for and cause ~~said~~ the project to be completed and paid therefor from the trust account funds deposited to the

project's account paying any balance, less cost and expenses, to the cemetery company. In the event there is no corporate trustee, the Commission shall appoint a committee to serve as trustees to contract for and cause ~~said~~ the project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company.

(f) In lieu of the payments outlined hereunder to the preconstruction trust account the cemetery company may deliver to the Commission a good and sufficient completion or performance bond in an amount and by surety companies acceptable to the Commission."

SECTION 5.(a) G.S. 90-210.60(2) reads as rewritten:

"(2) "Financial institution" means a ~~bank,~~ bank, credit union, trust company, savings bank, or savings and loan association authorized by law to do business in this State;"

SECTION 6.(a) There is created the Legislative Study Commission on the North Carolina Cemetery Act to study issues related to the regulation of cemeteries under the Act.

SECTION 6.(b) The Commission shall consist of 10 members as follows:

(1) Five members appointed by the Speaker of the House of Representatives.

(2) Five members appointed by the President Pro Tempore of the Senate.

SECTION 6.(c) The President Pro Tempore of the Senate shall designate one Senator as cochair and the Speaker of the House of Representatives shall designate one Representative as cochair. Vacancies on the Commission shall be filled by the same appointing authority that made the initial appointment.

SECTION 6.(d) The Commission shall study the following issues relating to the North Carolina Cemetery Act:

(1) Membership of the Cemetery Commission.

(2) Powers and duties of the Cemetery Commission, including:

a. The Commission's authority to investigate and address consumer complaints.

b. The Commission's authority and responsibilities with regard to approval of a proposed change of control pursuant to G.S. 65-59.

(3) Qualifications of trustees for cemetery funds.

(4) Security of trust accounts maintained by cemetery companies.

(5) Adequacy of trust accounts maintained by cemetery companies, the adequacy of bonds posted in lieu thereof, and whether there should be any additional options in lieu of maintaining trust accounts.

(6) Bond requirements.

(7) Qualified bond companies.

(8) Ways to ensure proper maintenance and funding of trust accounts and performance bonds as a condition for approval of a change of control under G.S. 65-59.

(9) Protection for consumers who die before final payment is collected on a preneed contract.

(10) Any other matters the Commission deems appropriate.

SECTION 6.(e) The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The Senate's and the House of Representatives' Directors of Legislative Assistants shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. The Commission may contract for professional, clerical, or consultant services as

provided by G.S. 120-32.02. If the Commission hires a consultant, the consultant shall not be a State employee or a person currently under contract with the State to provide services.

All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

SECTION 6.(f) The Commission shall report the results of its study and its recommendations to the 2011 General Assembly upon its convening, and the Commission shall terminate upon the filing of its report.

SECTION 7. Sections 1 through 5 of this act become effective October 1, 2010. The remainder of this act is effective when it becomes law.

SENATE BILL 18:
Amend Cemetery Act

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary II	**Date:**	June 14, 2010
Introduced by:	Sen. Goss	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to Second Edition S18-CSRV-67		

SUMMARY: ***This proposed committee substitute for Senate Bill 18 would make the following changes to the North Carolina Cemetery Act:***

- ***Prohibit the Cemetery Commission from approving a change of control of a cemetery company until the applicant provides proof of sufficient merchandise and preconstruction trust accounts, or appropriate surety bonds in lieu of those accounts.***
- ***Provide that funds in a perpetual care trust account be invested by the trustee in the same manner as other fiduciaries according to the prudent person rule.***
- ***Require cemetery companies to list the cost of opening and closing each grave space in their contracts.***
- ***Prohibit a cemetery company from requiring a purchaser of a grave space or mausoleum to purchase a vault from a particular seller.***
- ***Increase from 1 to 3 years the extension that may be given to a cemetery company for completion of construction of mausoleums and belowground crypts.***
- ***Create a study commission to study various issues related to the regulation of cemeteries under the North Carolina Cemetery Act.***

BILL ANALYSIS:

Change of control/ deposits to trust accounts,bonds. When a person acquires control of a cemetery company or otherwise acts to effectively change the control of a company, the person must apply to the Commission for approval of the change. **Section 1** of the bill would prohibit the Commission from approving the change of control until the applicant provides sufficient evidence that appropriate merchandise and preconstruction trust accounts are being maintained, or that appropriate bonds have been obtained in lieu of those accounts.

Perpetual care funds. Cemetery companies are required to establish trust funds and use the income for the care and maintenance of their cemeteries. Current law provides that the fund is to be invested and reinvested by the trustee in the same manner as provided by law for the investment of other trust funds by the clerk of superior court. **Sections 2 and 3** of the bill would amend the law to require that the funds be invested and reinvested by the trustee in the same manner as other fiduciaries, according to the prudent person rule.

Costs included in contracts. When cemetery companies enter into contracts for the sale of personal property or services, the contract must list separate costs for each item of personal property, each act of installation required, and each item of services included. **Section 4** of the bill would specify that the contract must include the cost for opening and closing each grave space.

Purchase of vaults. **Section 4** of the bill would also prohibit a cemetery company from requiring a purchaser of a grave space or mausoleum to purchase a vault (an underground receptacle designed to encase and protect a casket) from the cemetery company or any other particular seller. The company would be able to require that a casket be enclosed within a vault and would be able to charge a reasonable fee, not to exceed $20, for delivery or inspection of a vault purchased from another seller.

Extension for completing construction of mausoleums. Currently, a cemetery company that sells preconstruction mausoleums or belowground crypts must begin construction within 48 months of the date of the first sale, and construction must be completed within 5 years after that date. An extension for completion of construction up to one year may be granted by the Commission for good cause. **Section 5** of the bill would allow the Commission to grant extensions up to three years.

Study issues related to regulation of cemeteries. **Section 6** of the bill would create the Legislative Study Commission on the North Carolina Cemetery Act to address remaining areas of concern with the current law regulating cemeteries.

EFFECTIVE DATE: The portions of the act amending the current law would become effective October 1, 2010. The study provision would be effective when it becomes law.

**Wendy Graf Ray, counsel to Senate Commerce, substantially contributed to this summary.*

S18-SMRV-130(e2) v1

SENATE BILL 18: Amend Cemetery Act

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Judiciary II	**Date:**	June 14, 2010
Introduced by:	Sen. Goss	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	PCS to Second Edition S18-CSRV-67		

SUMMARY: ***This proposed committee substitute for Senate Bill 18 would make the following changes to the North Carolina Cemetery Act:***

- ***Prohibit the Cemetery Commission from approving a change of control of a cemetery company until the applicant provides proof of sufficient merchandise and preconstruction trust accounts, or appropriate surety bonds in lieu of those accounts.***
- ***Provide that funds in a perpetual care trust account be invested by the trustee in the same manner as other fiduciaries according to the prudent person rule.***
- ***Require cemetery companies to list the cost of opening and closing each grave space in their contracts.***
- ***Prohibit a cemetery company from requiring a purchaser of a grave space or mausoleum to purchase a vault from a particular seller.***
- ***Increase from 1 to 3 years the extension that may be given to a cemetery company for completion of construction of mausoleums and belowground crypts.***
- ***Create a study commission to study various issues related to the regulation of cemeteries under the North Carolina Cemetery Act.***

BILL ANALYSIS:

Change of control/ deposits to trust accounts,bonds. When a person acquires control of a cemetery company or otherwise acts to effectively change the control of a company, the person must apply to the Commission for approval of the change. **Section 1** of the bill would prohibit the Commission from approving the change of control until the applicant provides sufficient evidence that appropriate merchandise and preconstruction trust accounts are being maintained, or that appropriate bonds have been obtained in lieu of those accounts.

Perpetual care funds. Cemetery companies are required to establish trust funds and use the income for the care and maintenance of their cemeteries. Current law provides that the fund is to be invested and reinvested by the trustee in the same manner as provided by law for the investment of other trust funds by the clerk of superior court. **Sections 2 and 3** of the bill would amend the law to require that the funds be invested and reinvested by the trustee in the same manner as other fiduciaries, according to the prudent person rule.

Costs included in contracts. When cemetery companies enter into contracts for the sale of personal property or services, the contract must list separate costs for each item of personal property, each act of installation required, and each item of services included. **Section 4** of the bill would specify that the contract must include the cost for opening and closing each grave space.

Purchase of vaults. **Section 4** of the bill would also prohibit a cemetery company from requiring a purchaser of a grave space or mausoleum to purchase a vault (an underground receptacle designed to encase and protect a casket) from the cemetery company or any other particular seller. The company would be able to require that a casket be enclosed within a vault and would be able to charge a reasonable fee, not to exceed $20, for delivery or inspection of a vault purchased from another seller.

Extension for completing construction of mausoleums. Currently, a cemetery company that sells preconstruction mausoleums or belowground crypts must begin construction within 48 months of the date of the first sale, and construction must be completed within 5 years after that date. An extension for completion of construction up to one year may be granted by the Commission for good cause. **Section 5** of the bill would allow the Commission to grant extensions up to three years.

Study issues related to regulation of cemeteries. **Section 6** of the bill would create the Legislative Study Commission on the North Carolina Cemetery Act to address remaining areas of concern with the current law regulating cemeteries.

EFFECTIVE DATE: The portions of the act amending the current law would become effective October 1, 2010. The study provision would be effective when it becomes law.

**Wendy Graf Ray, counsel to Senate Commerce, substantially contributed to this summary.*

S18-SMRV-130(e2) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒ Committee Substitute for

SB 18 A BILL TO BE ENTITLED AN ACT TO AMEND THE NORTH CAROLINA CEMETERY ACT BY REQUIRING PROOF OF A SUFFICIENT TRUST FUND OR SURETY BOND PRIOR TO APPROVING A CHANGE OF CONTROL OF A CEMETERY COMPANY, CHANGING THE INVESTMENTS OPTIONS FOR PERPETUAL CARE TRUST FUNDS, REQUIRING CEMETERY COMPANIES TO LIST THE COST OF OPENING AND CLOSING A GRAVE SPACE AS PART OF THE CONTRACT, PROHIBITING A CEMETERY COMPANY FROM REQUIRING A PURCHASER OF A GRAVE SPACE TO PURCHASE A VAULT FROM A PARTICULAR SELLER, INCREASING THE EXTENSION THAT MAY BE GIVEN TO A CEMETERY COMPANY FOR COMPLETION OF CONSTRUCTION OF MAUSOLEUMS, ELIMINATING THE ABILITY TO POST BONDS IN LIEU OF DEPOSITS TO TRUST ACCOUNTS, AND CREATING THE LEGISLATIVE STUDY COMMISSION ON THE NORTH CAROLINA CEMETERY ACT.

☒ With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to Senate Committee Substitute Bill and recommendation that the House committee substitute bill be re-referred to the Committee on JUDICIARY II.

(FOR JOURNAL USE ONLY)

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

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

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

HOUSE BILL 2067

Short Title:	Caswell Internet.	(Local)
Sponsors:	Representative Faison.	
Referred to:	Ways and Means/Broadband Connectivity, if favorable, Public Utilities.	

May 27, 2010

A BILL TO BE ENTITLED

AN ACT TO ALLOW CASWELL COUNTY TO PROVIDE INTERNET SERVICES, AN AUTHORIZED PURPOSE UNDER CABLE TELEVISION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-274 reads as rewritten:

"**§ 153A-274. Public enterprise defined.**

As used in this Article, "public enterprise" includes:

(1) Water supply and distribution systems.

(2) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.

(3) Solid waste collection and disposal systems and facilities.

(4) Airports.

(5) Off-street parking facilities.

(6) Public transportation systems.

(7) 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.

(8) Cable television systems."

SECTION 2. This act applies to Caswell County only.

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

HOUSE BILL 2067: Caswell Internet

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity, if favorable, Public Utilities	**Date:**	June 9, 2010
Introduced by:	Rep. Faison	**Prepared by:**	Brenda J. Carter Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 2067 is a local act applicable only to Caswell County that would allow the county to operate cable television systems as a public enterprise.

CURRENT LAW: Under Article 15 of Chapter 153A of the General Statutes, counties have the authority to acquire, lease, construct, establish, enlarge, improve, extend, maintain, own, operate, and contract for the operation of public enterprises to furnish certain services to the county and its citizens. Public enterprise includes water supply & distribution systems, solid waste systems, airports, parking facilities, public transportation systems, and stormwater management programs.

BILL ANALYSIS: House Bill 2067 is a local act applicable only to Caswell County that would amend Article 15 of Chapter 153A of the General Statutes concerning public enterprises, by adding a new section authorizing county owned or operated cable television systems.

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

H2067-SMRV-125(e1) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 2067 DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Tillis
Sen.)

moves to amend the bill on page 1, line 20

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"(8) Cable television systems, to the limited extent that there is no existing provider of cable television or comparable internet service."

SIGNED Dan Ellis

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. 2067 DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Sen.) May

moves to amend the bill on page 1, line 2

( ) WHICH CHANGES THE TITLE

by deleting the words "CASWELL COUNTY" and substituting "CASWELL, FRANKLIN, AND NASH COUNTIES";

and on page 1, line 21, by deleting the words "Caswell County" and substituting the words "Caswell, Franklin, and Nash Counties".

SIGNED John M May

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 2067 A BILL TO BE ENTITLED AN ACT TO ALLOW CASWELL COUNTY TO PROVIDE INTERNET SERVICES, AN AUTHORIZED PURPOSE UNDER CABLE TELEVISION.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on PUBLIC UTILITIES.

(FOR JOURNAL USE ONLY)

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

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

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

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, June 23, 2010

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, June 23, 2010, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Kelly Alexander, Mark Hilton, and Sarah Stevens. Staff in attendance: Brenda Carter, Peter Capriglione, Tim Hovis and Susan Seitz. House Sergeant-at-Arms assisting: Young Bae and Toussant Avent. House Pages: Sofia Baneth of Wake County, Deborah Ross of Pitt County, and Katy Fuqua of Orange County. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. The following bills were placed before the Committee:

HB 1812 - A BILL TO BE ENTITLED: an act to ensure that a court, when considering whether to issue a domestic violence protective order, or pretrial release under the domestic violence crimes statute, considers the defendant's criminal record, as recommended by the joint legislative committee on domestic violence. The Chair called upon the bill sponsor Rep. Goodwin to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. At the request of the bill sponsor, the bill was sent to a subcommittee for more work with Rep. Bryant, Chairing with Stevens and Wilkins appointment. The Bill, Bill Analysis and Proposed Committee Substitute are attached. *(Attachment 3)*

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:15 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, June 23, 2010
1:00PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **House Bills**

   1. HB 1812 DV Cases/Review Criminal Record. Representative Goodwin

4. **Adjourn**

VISITOR REGISTRATION SHEET

Ways & Means — 23 June 2010

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mildred Spearman	NCAOC
Angie Bailey	e-NC Authority
Bill Lucy	attel
Barbara Moss	Conf of Clerks of Sup Ct
Anuja Acharya	Conf of Clerks of Sup. Ct.
Eddie Caldwell	NC Sheriffs' Assn.
Samuel Wall	Rep. Kelly Alexander
Jay Osborne	Communities United for Broadband

VISITOR REGISTRATION SHEET

Ways & Means — 23 June 10

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Thom Moore	FLA: WLL
Tammy Smith	DC AOC
TROY D. PAGE	NC AOC
Melissa Westmoreland	NC AOC
Daniel Ambrose	Electricities of N.C.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 1812*

Short Title:	DV Cases/Review Criminal Record.	(Public)
Sponsors:	Representatives Goodwin, Ross, R. Warren, McLawhorn (Primary Sponsors); M. Alexander, Carney, Faison, Fisher, Gill, Harrison, Hughes, Ingle, Rhyne, Stevens, Wainwright, and Whilden.	
Referred to:	Judiciary I, if favorable, Ways and Means/Broadband Connectivity.	

May 19, 2010

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT A COURT, WHEN CONSIDERING WHETHER TO ISSUE A DOMESTIC VIOLENCE PROTECTIVE ORDER, OR PRETRIAL RELEASE UNDER THE DOMESTIC VIOLENCE CRIMES STATUTE, CONSIDERS THE DEFENDANT'S CRIMINAL RECORD, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-2(a) reads as rewritten:

"(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. Any action for a domestic violence protective order requires that a summons be issued and served. The summons issued pursuant to this Chapter shall require the defendant to answer within 10 days of the date of service. Attachments to the summons shall include the complaint, notice of hearing, any temporary or ex parte order that has been issued, and other papers through the appropriate law enforcement agency where the defendant is to be served. Upon receipt of the complaint and summons for service, the law enforcement agency shall provide the clerk of court with a State criminal background check of the defendant named in the complaint for inclusion in the court's file. No court costs shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena in compliance with the Violence Against Women Act, 42 U.S.C. § 3796gg-5."

SECTION 2. G.S. 50B-3(a) reads as rewritten:

"**§ 50B-3. Relief.**

(a) If the court, including magistrates as authorized under G.S. 50B-2(c1), finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence. The court, when considering whether to grant relief, shall consider the defendant's criminal record as a factor in making its decision. A protective order may include any of the following types of relief:

...."

SECTION 3. G.S. 15A-534.1(a) reads as rewritten:

"**§ 15A-534.1. Crimes of domestic violence; bail and pretrial release.**

(a) In all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes, the judicial official who determines the conditions of pretrial release shall be a judge, who shall consider the defendant's criminal record, if any, and the following provisions shall apply in addition to the provisions of G.S. 15A-534:

...."

SECTION 4. This act becomes effective October 1, 2010.

HOUSE BILL 1812:
DV Cases/Review Criminal Record

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	June 22, 2010
Introduced by:	Reps. Goodwin, Ross, R. Warren, McLawhorn	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition H1812-CSSA-76[v.1]		

SUMMARY: ***The Proposed Committee Substitute for House Bill 1812 provides that a defendant's criminal record, if any, will be available to a judge who is (1) determining whether to issue a domestic violence protective order, or (2) determining the bail or pretrial release conditions of a defendant charged with an offense covered by the domestic violence statute.***

[As introduced, this bill was identical to S1243, as introduced by Sen. Graham, which is currently in Senate Judiciary I.]

CURRENT LAW: Upon application for a domestic violence protective order, if a court finds that an act of domestic violence has occurred, it must grant an order restraining the defendant from such further acts. Acts of domestic violence include any of the following:

- Attempting to cause bodily injury, or intentionally causing bodily injury.
- Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, that rises to such a level as to inflict substantial emotional distress.
- Committing any sexual offense against an adult or minor.

A person arrested for certain criminal offenses (stalking, communicating a threat, domestic criminal trespass, violation of a domestic violence protective order, or specified felonies against a spouse, former spouse, or a person with whom the defendant has lived) must be brought before a judge to determine bail and conditions of pretrial release. If a judge is not available within the first 48 hours of arrest, then the person is brought before a magistrate.

BILL ANALYSIS:

Section 1: This section amends the process for obtaining a domestic violence protective order. Current law requires that a person seeking a domestic violence protective order must provide an appropriate law enforcement agency with a summons and complaint to be served upon the defendant. The amendment provides that upon receipt of the summons and complaint for service, the receiving agency will provide, prior to the hearing noticed in the summons, a name-based State criminal background check of the named defendant for inclusion in the court's file.

Section 2: This section relates to Section 1 of the act; the defendant's State criminal record (if any) that has been included in the court file would be available to the judge considering the complaint seeking a domestic violence protective order. The amendment provides that the court, when determining whether any acts of domestic violence have occurred, and whether to restrain the defendant from further acts, shall consider the defendant's criminal record. The provision only requires the court to consider the record, and does not remove any judicial discretion.

Section 3: If a person is arrested for committing any offense listed in the domestic violence statute, the judge is required to both decide on bail, and whether to impose any conditions of pretrial release. The law requires that the court impose at least one of the following conditions:

- Release the defendant on his written promise to appear.
- Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.
- Place the defendant in the custody of a designated person or organization agreeing to supervise him.
- Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.
- House arrest with electronic monitoring.

This amendment would require the court to consider a defendant's criminal record when determining bail and conditions of pretrial release. The provision only requires the court to consider the record, and does not remove any judicial discretion.

EFFECTIVE DATE: This act becomes effective October 1, 2010.

**This summary was substantially prepared by Hal Pell, Staff Attorney.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1812*
PROPOSED COMMITTEE SUBSTITUTE H1812-CSSA-76 [v.1]

6/22/2010 2:13:12 PM

Short Title: DV Cases/Review Criminal Record. (Public)

Sponsors:

Referred to:

May 19, 2010

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT A COURT, WHEN CONSIDERING WHETHER TO ISSUE A DOMESTIC VIOLENCE PROTECTIVE ORDER, OR PRETRIAL RELEASE UNDER THE DOMESTIC VIOLENCE CRIMES STATUTE, CONSIDERS THE DEFENDANT'S CRIMINAL RECORD, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-2(a) reads as rewritten:

"(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. Any action for a domestic violence protective order requires that a summons be issued and served. The summons issued pursuant to this Chapter shall require the defendant to answer within 10 days of the date of service. Attachments to the summons shall include the complaint, notice of hearing, any temporary or ex parte order that has been issued, and other papers through the appropriate law enforcement agency where the defendant is to be served. Upon receipt of the complaint and summons for service, the law enforcement agency shall, prior to the hearing noticed in the summons, provide the clerk of court with a name-based State criminal background check of the defendant named in the complaint for inclusion in the court's file. No court costs shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena in compliance with the Violence Against Women Act, 42 U.S.C. § 3796gg-5."

SECTION 2. G.S. 50B-3(a) reads as rewritten:

"**§ 50B-3. Relief.**

(a) If the court, including magistrates as authorized under G.S. 50B-2(c1), finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence. The court, when considering whether to grant relief, shall consider the defendant's criminal record as a factor in making its decision. A protective order may include any of the following types of relief:

...."

SECTION 3. G.S. 15A-534.1(a) reads as rewritten:

"**§ 15A-534.1. Crimes of domestic violence; bail and pretrial release.**

(a) In all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes, the judicial official who determines the conditions of pretrial release shall be a judge, who shall consider the defendant's criminal record, if any, and the following provisions shall apply in addition to the provisions of G.S. 15A-534:

...."

SECTION 4. This act becomes effective October 1, 2010.

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Tuesday, June 29, 2010

Upon call of the Chair, the House Committee on Ways and Means//Broadband Connectivity met on Tuesday, June 29, 2010, around the desk of Representative Bill Faison. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates; Representatives Kelly Alexander, John May, Angela Bryant, Mitch Gillespie, Jim Gulley, Phil Haire, Mark Hilton, Sarah Stevens, Joe Tolson, and Winkie Wilkins.

The Chairman called the meeting to order to consider **SB 1077 - A BILL TO BE ENTITLED: an act to authorize the use of bonds to secure the appearance of a defendant that is released postconviction and is determined to have absconded. SB 1077's body was changed to reflect the following language: A BILL TO BE ENTITLED: AN ACT to repeal the sunset provision pertaining to the e-NC authority, as recommended by the house select committee on high-speed internet access in rural and urban areas.**

A proposed committee substitute was placed before the members and a motion was accepted to place a proposed committee substitute before the committee. Representative Faison explained the changes in the substitute and moved for adoption of the proposed committee substitute. After the explanation of the bill Chairman Faison opened the floor for questions and comments.

Rep. Alexander made the motion of a favorable report for the PCS, unfavorable to the Senate committee substitute, which changes the title, and sends the bill to the floor. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 1*)

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting.

Respectfully submitted,

Representative Bill Faison
Chairman

Lavada Vitalis
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1077
Judiciary II Committee Substitute Adopted 5/7/09
House Committee Substitute Favorable 6/16/10
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1077-PCS35476-LB-98

Short Title:	Remove E-NC Sunset.	(Public)
Sponsors:		
Referred to:		

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE SUNSET PROVISION PERTAINING TO THE E-NC AUTHORITY, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON HIGH-SPEED INTERNET ACCESS IN RURAL AND URBAN AREAS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 4 of S.L. 2003-425, as amended by Section 12.3(a) of S.L. 2006-66, reads as rewritten:

"**SECTION 4.** Sections 1 and 2 of this act become effective December 31, 2003, with the e-NC Authority hereby designated as the successor entity of the Rural Internet Access Authority that will dissolve on that date, as provided by Section 5 of S.L. 2000-149. The remainder of this act is effective when it becomes law. ~~The e-NC Authority created in this act is dissolved effective December 31, 2011. This act is repealed effective December 31, 2011. Part 2F of Article 10 of Chapter 143B of the General Statutes and G.S. 120-123(77), as enacted by this act, are repealed effective December 31, 2011.~~"

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

SENATE BILL 1077: Remove E-NC Sunset

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	June 28, 2010
Introduced by:	Sen. Snow	**Prepared by:**	Susan Sitze*
Analysis of:	S1077-PCS35476-LB-98		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1077 would repeal the sunset provision pertaining to the e-NC Authority. The bill is a recommendation of the House Select Committee on High Speed Internet Access.***

CURRENT LAW: The e-NC Authority is an independent agency within the Department of Commerce. The purpose of the Authority is to manage, oversee, promote, and monitor efforts to provide rural counties and distressed urban areas with high-speed broadband Internet access. The Authority also serves as the central rural and urban distressed areas Internet access policy planning body of the State. The authority is directed by law to communicate and coordinate with State, regional, and local agencies and private entities in order to continue the development and facilitation of a coordinated Internet access policy for the citizens of North Carolina.

BILL ANALYSIS: The e-NC Authority was created by the General Assembly in 2003 and designated as the designated as the successor entity of the Rural Internet Access Authority. E-NC was initially scheduled to be dissolved effective December 31, 2006; but it was extended for an additional five years and is now scheduled to be dissolved effective December 31, 2011. This bill would remove the sunset provision entirely.

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

S1077-SMSA-153(e3) v1

**This summary was substantially prepared by Brenda Carter, Staff Attorney.*

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒ House Committee Substitute # 1 for

SB 1077 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE USE OF BONDS TO SECURE THE APPEARANCE OF A DEFENDANT THAT IS RELEASED POSTCONVICTION AND IS DETERMINED TO HAVE ABSCONDED.

☒ With a favorable report as to House committee substitute bill 2, which changes the title, unfavorable as to House committee substitute bill 1.

(FOR JOURNAL USE ONLY)

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

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

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

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Thursday, July 01, 2010

Upon call of the Chair, the House Committee on Ways and Means//Broadband Connectivity met on Thursday, July 1, 2010, around the desk of Representative Bill Faison. The following members were present: Chairman Bill Faison; Representatives Kelly Alexander, John May, Angela Bryant, Mark Hilton, Sarah Stevens and Winkie Wilkins. Staff in attendance: Susan Seitz.

The Chairman called the meeting to order to consider **HB 1812 - A BILL TO BE ENTITLED: an act to ensure that a court, when considering whether to issue a domestic violence protective order, or pretrial release under the domestic violence crimes statute, considers the defendant's criminal record, as recommended by the joint legislative committee on domestic violence.**

A proposed committee substitute was placed before the members and Rep. Wilkins made a motion to move the PCS, it was accepted and placed before the committee. The Chair called upon the bill sponsor Rep. Goodwin to explain the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments.

Rep. Bryant made the motion of a favorable report for the PCS, unfavorable to the original bill, which changes the title, and sends the bill to the floor. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 1*)

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting.

Respectfully submitted,

Representative Bill Faison
Chairman

Lavada Vitalis
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1812*
PROPOSED COMMITTEE SUBSTITUTE H1812-CSSA-80 [v.1]

6/29/2010 3:32:10 PM

Short Title: DV Cases/Review Criminal Record. (Public)

Sponsors:

Referred to:

May 19, 2010

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT A COURT, WHEN CONSIDERING PRETRIAL RELEASE UNDER THE DOMESTIC VIOLENCE CRIMES STATUTE, CONSIDERS THE DEFENDANT'S CRIMINAL RECORD, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534.1(a) reads as rewritten:

"**§ 15A-534.1. Crimes of domestic violence; bail and pretrial release.**

(a) In all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing a felony provided in Articles 7A, 8, 10, or 15 of Chapter 14 of the General Statutes upon a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of an order entered pursuant to Chapter 50B, Domestic Violence, of the General Statutes, the judicial official who determines the conditions of pretrial release shall be a ~~judge, and the~~judge. The judge shall direct a law enforcement officer or a district attorney to provide a criminal history report for the defendant and shall consider the criminal history when setting conditions or release. After setting conditions of release, the judge shall return the report to the providing agency or department. No judge shall unreasonably delay the determination of conditions of pretrial release for the purpose of reviewing the defendant's criminal history report. The following provisions shall apply in addition to the provisions of G.S. 15A-534:

...."

SECTION 2. This act becomes effective October 1, 2010.

HOUSE BILL 1812:
DV Cases/Review Criminal Record

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	July 1, 2010
Introduced by:	Reps. Goodwin, Ross, R. Warren, McLawhorn	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H1812-CSSA-80		

SUMMARY: The Proposed Committee Substitute for House Bill 1812 provides that a defendant's criminal record, if any, will be available to a judge who is determining the bail or pretrial release conditions of a defendant charged with an offense covered by the domestic violence statute.

[As introduced, this bill was identical to S1243, as introduced by Sen. Graham, which is currently in Senate Judiciary I.]

CURRENT LAW: A person arrested for certain criminal offenses (stalking, communicating a threat, domestic criminal trespass, violation of a domestic violence protective order, or specified felonies against a spouse, former spouse, or a person with whom the defendant has lived) must be brought before a judge to determine bail and conditions of pretrial release. If a judge is not available within the first 48 hours of arrest, then the person is brought before a magistrate.

BILL ANALYSIS: If a person is arrested for committing any offense listed in the domestic violence statute, the judge is required to both decide on bail, and whether to impose any conditions of pretrial release. The law requires that the court impose at least one of the following conditions:

- Release the defendant on his written promise to appear.
- Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.
- Place the defendant in the custody of a designated person or organization agreeing to supervise him.
- Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.
- House arrest with electronic monitoring.

The bill would require the court to direct a law enforcement officer or a district attorney to provide a criminal history report for the defendant and require the court to consider a defendant's criminal record when determining bail and conditions of pretrial release. The provision only requires the court to consider the record, and does not remove any judicial discretion. Once the conditions of release have been set, the criminal history report is returned to the agency or department that provided it.

EFFECTIVE DATE: This act becomes effective October 1, 2010.

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☐ Committee Substitute for

HB 1812 A BILL TO BE ENTITLED AN ACT TO ENSURE THAT A COURT, WHEN CONSIDERING WHETHER TO ISSUE A DOMESTIC VIOLENCE PROTECTIVE ORDER, OR PRETRIAL RELEASE UNDER THE DOMESTIC VIOLENCE CRIMES STATUTE, CONSIDERS THE DEFENDANT'S CRIMINAL RECORD, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

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

(FOR JOURNAL USE ONLY)

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

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

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

MINUTES
HOUSE COMMITTEE ON WAYS AND MEANS//BROADBAND CONNECTIVITY

Wednesday, July 07, 2010

The House Committee on Ways and Means//Broadband Connectivity met on Wednesday, July 07, 2010, in Room 415 of the Legislative Office Building at 1:00 P.M. The following members were present: Chairman Bill Faison; Vice-Chair Lorene Coates and Thom Tillis; Representatives Phil Haire, Mark Hilton, Sarah Stevens, Joe Tolson and Winkie Wilkins. Staff in attendance: Brenda Carter. House Sergeant-at-Arms assisting: Marvin Lee and Bob Rossi. House Pages: Cameron Perry of Craven County, Morgan Greenwood of Surry County, Cameron Skidmore of Stanley County, Preston Ferguson of Chatham County and Katie Shay of Orange County. The Agenda and Visitor Registration Sheet are attached. *(Attachment 1 and 2)*

The Chairman called the meeting to order and welcomed staff, pages, members and visitors. The following bill was placed before the Committee:

Senate Bill 1399 - A BILL TO BE ENTITLED: an act to amend the protest petition requirement for Durham County. The Chair called upon the bill sponsor in his absence, Rep. Wilkins explained the bill. After the explanation of the bill Chairman Faison opened the floor for questions and comments. Rep. Stevens was recognized for a motion to give a favorable report. The motion was passed. The Bill, Bill Analysis and Committee Report are attached. (*Attachment 3*)

With no further business to come before the committee Chairman Faison announced the adjournment of the meeting. The meeting adjourned at 1:10 p.m.

Respectfully submitted,

Representative Bill Faison
Chair

Lavada Vitalis
Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE COMMITTEE ON WAYS AND MEANS/BROADBAND CONNECTIVITY

AGENDA

Wednesday, July 7, 2010
1:00PM
Room 415, LOB

1. **Welcome**

   Representative Bill Faison, Chairman

2. **Introductions**

3. **Bills**

   1. SB1399 Zoning/Durham County Protest Petitions Senator McKissick

4. **Adjourn**

VISITOR REGISTRATION SHEET

Ways & Means — 7 July 2010

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dale [illegible]	Electricities of N.C., Inc
Pam Melton	CenturyLink
Brad Phillips	TWC
Mary Trabue	Brady Pierce

VISITOR REGISTRATION SHEET

Ways & Means — 2 July 2010

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	ACT
Kathryn Pe	Durham County
Lisa Martin	NC Home Builders

SENATE BILL 1399
House Committee Substitute Favorable 6/29/10

Short Title: Zoning/Durham County Protest Petitions. (Local)

Sponsors:

Referred to:

May 26, 2010

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROTEST PETITION REQUIREMENT FOR DURHAM COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Sections 1(a) and (b) of S.L. 2003-83 reads as rewritten:

"**SECTION 1.(a)** Zoning regulations and restrictions and zone boundaries 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 of the area either 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 shall not become effective except by favorable vote of three-fourths of all members of the board of commissioners. The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance. They also shall not apply to an amendment to an adopted special use district or conditional use district if the amendment does not: (i) change the types of uses that are permitted within the district or increase the approved density for residential development, (ii) increase the total approved size of nonresidential development, or (iii) reduce the size of any buffers or screening approved for the special use or conditional use district.~~ a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths of all the members of the Board of County Commissioners. For the purposes of this subsection, vacant positions on the board and members who are excused from voting shall not be considered "members of the board" for calculation of the requisite supermajority.

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-wide buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot-wide buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the county may rely on the county tax listing to determine the "owners" of potentially qualifying areas.

The foregoing provisions concerning protests shall not be applicable to an amendment to an adopted (i) special use district, (ii) conditional use 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 district, conditional use district, or conditional district.

"**SECTION 1.(b)** ~~Protest petitions must be received by the Clerk to the Board of Commissioners in sufficient time to allow the county at least four normal work days, excluding Saturdays, Sundays, and legal holidays, before the date established for a public hearing on the proposed charge or amendment to determine the sufficiency and accuracy of the petition.~~ No protest against any change in or amendment to a zoning ordinance or zoning map shall be valid or effective 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 Clerk to the Board of Commissioners in sufficient time to allow the county at least four normal workdays, 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 Board of County Commissioners may by ordinance require that all protest petitions be on a form prescribed and furnished by the county, and such form may prescribe any reasonable information deemed necessary to permit the county to determine the sufficiency and accuracy of the petition. 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 above at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement."

SECTION 2. This act applies to the County of Durham only.

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

SENATE BILL 1399:
Zoning/Durham County Protest Petitions

2009-2010 General Assembly

Committee:	House Ways and Means/Broadband Connectivity	**Date:**	July 6, 2010
Introduced by:	Sen. McKissick	**Prepared by:**	Tim Hovis
Analysis of:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 1399 would amend the current law (S.L. 2003-83) governing protest petitions against zoning regulations for property owners in Durham County.

[As introduced, this bill was identical to H2033, as introduced by Reps. Hall, Luebke, Michaux, Wilkins, which is currently in House Judiciary I, if favorable, Ways and Means/Broadband Connectivity.]

CURRENT LAW: S.L. 2003-83 grants to property owners in Durham County the right to protest amendments or changes to zoning regulations and restrictions. If the protest petition is signed by the owners of 20% or more of the area in the proposed change or within 100 feet of the lots adjacent to or opposite to the area of the proposed change, the zoning change shall not become effective unless approved by a ¾ vote of all members of the Durham County Board of Commissioners. This provision does not apply to amendments to adopted special use or conditional use permits that do not: (1) change the types of permitted uses or increase the approved density for residential development; (2) increase the total size of nonresidential development; or (3) reduce the size of approved buffers or screening.

The petition must be received at least 4 work days prior to the public hearing for the proposed amendment or change.

BILL ANALYSIS: Senate Bill 1399 amends the protest petition requirement for Durham County to mirror the statutory protest petition requirement for cities in G.S. 160A-385 and 386.

The new language provides that a ¾ vote of the Board of the Durham County Commissioners is required to adopt a zoning ordinance amendment where a qualified protest petition has been received against the amendment. To calculate the supermajority, vacant seats and members excused from voting shall not be considered members of the Board.

A qualified protest petition must be signed either by the owners of 20% or more of the area included in the proposed change or 5% of a 100-foot-wide buffer extending along the entire boundary of each area to be rezoned. Street right-of-way is not to be considered in calculating the buffer if the street right of way is 100 feet wide or less.

To be valid, protest petitions (1) must be in writing (2) bear the actual signatures of the required number of people (3) state that the people do protest the proposed change to the zoning ordinance, and (4) be received by the Clerk to the Board in sufficient time to allow the county at least 4 work days before the date established for the public hearing to establish the sufficiency and adequacy of the petition. The county may require that all protest petitions be on forms supplied by the county.

Persons who have signed the petition may withdraw their names at anytime prior to the vote on the amendment. Only protest petitions meeting the requirements for such petitions at the time of the vote will trigger the supermajority requirement.

The provisions regarding protest petitions are not applicable to amendments to an adopted special use or conditional use district. They also do not apply to a conditional district if the amendment does not (1)

change the types of uses, (2) increase the approved density for residential development, (3) increase the total approved size of non residential development, or (4) reduce the size of buffers or screening approved for the special use district, conditional use district, or conditional district.

EFFECTIVE DATE: This act is effective when it becomes law and applies to the County of Durham only.

S1399-SMRG-120(e2) v1

2009 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Faison (Chair) for the Committee on WAYS AND MEANS/BROADBAND CONNECTIVITY.

☒Committee Substitute for

SB 1399 A BILL TO BE ENTITLED AN ACT TO AMEND THE PROTEST PETITION REQUIREMENT FOR DURHAM COUNTY.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

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

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.