2009

SENATE
JUDICIARY I

MINUTES

SENATE COMMITTEE
ON
JUDICIARY I

Senator Martin L. Nesbitt, Chair
2009-2010

Janette Lee
Committee Assistant

SENATE JUDICIARY I COMMITTEE

2009–2010

MEMBERSHIP

Members	Office No.	Telephone No.
Chairman, Sen. Martin L. Nesbitt, Jr.	303-B LOB	733-3001
Vice Chairman, Sen. R. C. Soles, Jr.	2022 LB	733-5963
Vice Chairman, Sen. Daniel G. Clodfelter	408 LOB	715-8331
Vice Chairman, Sen. Peter S. Brunstetter	522 LOB	733-5743
Vice Chairman, Josh Stein	410 LOB	715-6400
Sen. Charles W. Albertson	523 LOB	733-5705
Sen. Philip E. Berger	1026 LB	733-5708
Sen. Dan Blue	314 LOB	733-5752
Sen. Eleanor Kinnaird	2115 LB	733-5804
Sen. Floyd B. McKissick, Jr.	621 LOB	733-4599
Sen. David Rouzer	520 LOB	733-5748
Sen. Andrew C. Brock	1119 LB	715-0690
Sen. Harry Brown	521 LOB	715-3034
Sen. Debbie A. Clary	515 LOB	715-3038
Sen. Malcolm Graham	518 LOB	733-5650
Sen. David W. Hoyle	300-A LOB	733-5734
Sen. Clark Jenkins	308 LOB	715-3040
Sen. Tony Rand	300-C LOB	733-9892
Sen. Richard Stevens	406 LOB	733-5653
Sen. Jerry W. Tillman	628 L0B	733-5870

STAFF:
Attorneys:
Erika Churchill, Research Division
Susan Sitze, Research Division
Giles Perry, Research Division
Bill Patterson, Research Division

Janette Lee, Committee Assistant

SENATE JUDICIARY I COMMITTEE
(Civil)

February 24. 2009
10:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Tuesday, February 24, 2009, in Room 1027 of the Legislative Building. Senators present were Committee Chairman Senator Martin L. Nesbitt, Vice-Chairmen Senator Dan Clodfelter, Senator Pete Brunstetter, Senator R. C. Soles, and Senator Josh Stein; members, Senator Charlie Albertson, Senator Phil Berger, Senator Andrew Brock, Senator Malcolm Graham, Senator David Hoyle, Senator Vernon Malone, Senator Floyd McKissick, Senator Tony Rand, Senator David Rouzer, Senator Richard Stevens, and Senator Jerry Tillman. Counsel Erika Churchill, Giles Perry, and Susan Sitze.

Senator Nesbitt called the meeting to order and introduced Senator John Snow to explain S.B. 4.– Clarify Emergency Judge Qualifications. Senator Snow said this bill speaks to qualifications for emergency judges. It changes the law to say they can serve as an emergency judge for Superior or District Court. As the law is now it restricts judges to come back after retirement into an emergency situation to serve only in the court they served before retiring. After questions and discussion Senator Hoyle moved the bill be given a favorable report and it passed unanimously.

Senator Nesbitt welcomed the committee and asked each member to introduce themselves. He also welcomed the Staff Counsel for the committee this year Erika Churchill, Giles Perry, Bill Patterson and Susan Sitze, and the Committee Assistant Jan Lee. Sergeant-at-Arms and pages were introduced.

The Bills on the Agenda were taken up as follows:

S.B 38 – Municipal District Elections 2011/Census, Senator Clodfelter explained the bill has become a Committee Substitute and continued to explain. Senator Clodfelter made the motion to adopt the Committee Substitute for Municipal District Elections 20/11 Census. Senator Tillman moved the Committee Substitute for SB 39 be given a favorable and it passed unanimously.

S.B. 136 – LEC Term Changes/Ethics Training, Senator Clodfelter explained the bill has become a Committee Substitute and continued explaining. He presented an amendment to the Committee Substitute and moved for adoption. After questions and discussion he withdrew the amendment and with suggestions from the committee and staff the amendment was rewritten and Senator Clodfelter moved for adoption of the new amendment. Senator Soles moved for adoption of the new Committee Substitute and the committee voted to give the original bill an unfavorable report and the new Committee Substitute a favorable report.

The meeting was adjourned at 11:00 a.m.

Copies of Senate Bill 4, Bill Analysis for Senate Bill 4; Senate Bill 38; PCS for Senate Bill 38; Bill Analysis for the PCS for Senate Bill 38; Senate Bill 136, PCS for Senate Bill136, Bill Analysis for PCS for 136; Amendment for PCS for SB 136 are attached to these Minutes as Attachments 1, II, III, IV, V, VI, VII, VIII, IX respectively.

Respectfully Submitted,

Senator Martin L. Nesbitt
Chairman

Janette W. Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2009

S 1

SENATE BILL 4

Short Title:	Clarify Emergency Judge Qualifications.	(Public)
Sponsors:	Senators Snow and Nesbitt.	
Referred to:	Judiciary I.	

January 29, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE QUALIFICATIONS FOR APPOINTMENT AS AN EMERGENCY JUDGE OF THE SUPERIOR COURT OR THE DISTRICT COURT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-52 reads as rewritten:

"**§ 7A-52. Retired district and superior court judges may become emergency judges subject to recall to active service; compensation for emergency judges on recall.**

(a) Judges of the district court and judges of the superior court who have not reached the mandatory retirement age specified in G.S. 7A-4.20, but who have retired under the provisions of G.S. 7A-51, or under the Uniform Judicial Retirement Act after having completed five years of creditable service, may apply as provided in G.S. 7A-53 to become emergency judges of ~~the court from which they retired.~~ any court on which they served. The Chief Justice of the Supreme Court may order any emergency judge of the district or superior court who, in his opinion, is competent to perform the duties of a judge of ~~the court from which such judge retired,~~ any court on which the judge served, to hold regular or special sessions of such court, as needed. Order of assignment shall be in writing and entered upon the minutes of the court to which such emergency judge is assigned.

(b) In addition to the compensation or retirement allowance the judge would otherwise be entitled to receive by law, each emergency judge of the district or superior court who is assigned to temporary active service by the Chief Justice shall be paid by the State the judge's actual expenses, plus four hundred dollars ($400.00) for each day of active service rendered upon recall. No recalled retired trial judge shall receive from the State total annual compensation for judicial services in excess of that received by an active judge of the bench to which the judge is recalled."

SECTION 2. G.S. 7A-53 reads as rewritten:

"**§ 7A-53. Application to the Governor; commission as emergency judge.**

No retired judge of the district or superior court may become an emergency judge except upon his written application to the Governor certifying his desire and ability to serve as an emergency judge. If the Governor is satisfied that the applicant qualifies under G.S. 7A-52(a) to become an emergency judge and that he is physically and mentally able to perform the official duties of an emergency judge, he shall issue to such applicant a commission as an emergency judge of ~~the court from which he retired.~~ any court on which the judge served. The commission shall be effective upon the date of its issue and shall terminate when the judge to whom it is issued reaches the maximum age for judicial service under G.S. 7A-4.20(a)."

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

SENATE BILL 4:
Clarify Emergency Judge Qualifications

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	February 24, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 4 clarifies the qualifications for appointment as an emergency judge of the superior court or the district court.***

CURRENT LAW: Currently, judges of the district court or the superior court, who have not reached mandatory retirement age, but who have retired from the court after at least five years of service, may apply to become emergency judges **of the court from which they retired.**

BILL ANALYSIS: Senate Bill 4 would amend the qualifications for emergency judges to provide that a retired judge may apply or be appointed to serve as an emergency judge for any court **on which the judge served.** This change will allow a retired judge who has served on both the district court and the superior court to serve as an emergency judge for either court.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 38

Short Title:	Municipal District Elections 2011/Census.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

February 4, 2009

A BILL TO BE ENTITLED

AN ACT TO CONTINUE TO APPLY SPECIAL RULES TO MUNICIPAL REDISTRICTING AFTER THE 2010 CENSUS THAT APPLY TO ELECTIONS SCHEDULED FOR 2011.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-23.1 reads as rewritten:

"**§ 160A-23.1. Special rules for redistricting after ~~2000~~ 2010 census.**

(a) As soon as possible after receipt of federal census information in ~~2001~~2011 the council of any city which elects the members of its governing board on a district basis, or where candidates for such office must reside in a district in order to run, shall evaluate the existing district boundaries to determine whether it would be lawful to hold the next election without revising districts to correct population imbalances. If such revision is necessary, the council shall consider whether it will be possible to adopt the changes (and obtain approval from the United States Department of Justice, if necessary) before the third day before opening of the filing period for the municipal election. The council shall take into consideration the time that will be required to afford ample opportunities for public input. If the council determines that it most likely will not be possible to adopt the changes (and obtain federal approval, if necessary) before the third business day before opening of the filing period, and determines further that the population imbalances are so significant that it would not be lawful to hold the next election using the current electoral districts, it may adopt a resolution delaying the election so that it will be held on the timetable provided by subsection (d) of this section. Before adopting such a resolution, the council shall hold a public hearing on it. The notice of public hearing shall summarize the proposed resolution and shall be published at least once in a newspaper of general circulation, not less than seven days before the date fixed for the hearing. Notwithstanding adoption of such a resolution, if the council proceeds to adopt the changes, (and federal approval is obtained, if necessary) by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule under the revised electoral districts. Any resolution adopted under this subsection, and any changes in electoral district boundaries made under this section shall be submitted to the United States Department of Justice (if the city is covered under Section 5 of the Voting Rights Act of 1965), the State Board of Elections, and to the board conducting the elections for that city.

(b) In adopting any revisal under this section, if the council determines that in order for the plan to conform to the Voting Rights Act of 1965, the number of district seats needs to be increased or decreased, it may do so by following the procedures set forth in Part 4 of Article 5 of Chapter 160A of the General Statutes, except that the ordinance under G.S. 160A-102 may be adopted at the same meeting as the public hearing, and any referendum on the change under G.S. 160A-103 shall not apply to the municipal election in ~~2001 or 2002.~~2011 or 2012.

(c) If the resolution provided for in subsection (a) of this section is not adopted and:

(1) Proposed changes to the electoral districts are not adopted, or

(2) Such changes are adopted, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received,

by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule using the current electoral districts.

(d) If the council adopts the resolution provided for in subsection (a) of this section and does not adopt the changes, or does adopt the changes, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received, by the end of the third day before the opening of the filing period, the municipal election shall be rescheduled as provided in this subsection and current officeholders shall hold over until their successors are elected and qualified. For cities using the:

(1) Partisan primary and election method under G.S. 163-291, the primary shall be held on the primary election date for county officers in ~~2002;~~2012, the second primary, if necessary, shall be held on the second primary election date for county officers in ~~2002,~~ 2012, and the general election shall be held on the general election date for county officers in ~~2002;~~2012;

(2) Nonpartisan primary and election method under G.S. 163-294, the primary shall be held on the primary election date for county officers in ~~2002~~ 2012 and the election shall be held on the date for the second primary for county officers in ~~2002;~~ 2012;

(3) Nonpartisan plurality election method under G.S. 163-292, the election shall be held on the primary election date for county officers in ~~2002;~~2012;

(4) Election and runoff method under G.S. 163-293, the election shall be held on the primary election date for county officers in ~~2002~~2012 and the runoffs, if necessary, shall be held on the date for the second primary for county officers in ~~2002.~~2012.

The organizational meeting of the new council may be held at any time after the results of the election have been officially determined and published, but not later than the time and date of the first regular meeting of the council in November 2002, except in the case of partisan municipal elections, when the organizational meeting shall be held not later than the time and date of the first regular meeting of the council in December of ~~2002.~~ 2012.

(e) This section does not apply to any municipality that, under its charter, is not scheduled to hold an election in 2011."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 38
PROPOSED COMMITTEE SUBSTITUTE S38-CSST-2 [v.2]

2/23/2009 4:21:19 PM

Short Title: Municipal District Elections/Census. (Public)

Sponsors:

Referred to:

February 4, 2009

A BILL TO BE ENTITLED

AN ACT TO CONTINUALLY APPLY THE SPECIAL RULES FOLLOWING A FEDERAL DECENNIAL CENSUS TO MUNICIPAL REDISTRICTING THAT CENSUS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-23.1 reads as rewritten:

"**§ 160A-23.1. Special rules for redistricting after ~~2000~~ a federal decennial census.**

(a) As soon as possible after receipt of federal decennial census ~~information in 2001~~ information, the council of any city which elects the members of its governing board on a district basis, or where candidates for such office must reside in a district in order to run, shall evaluate the existing district boundaries to determine whether it would be lawful to hold the next election without revising districts to correct population imbalances. If such revision is necessary, the council shall consider whether it will be possible to adopt the changes (and obtain approval from the United States Department of Justice, if necessary) before the third day before opening of the filing period for the municipal election. The council shall take into consideration the time that will be required to afford ample opportunities for public input. If the council determines that it most likely will not be possible to adopt the changes (and obtain federal approval, if necessary) before the third business day before opening of the filing period, and determines further that the population imbalances are so significant that it would not be lawful to hold the next election using the current electoral districts, it may adopt a resolution delaying the election so that it will be held on the timetable provided by subsection (d) of this section. Before adopting such a resolution, the council shall hold a public hearing on it. The notice of public hearing shall summarize the proposed resolution and shall be published at least once in a newspaper of general circulation, not less than seven days before the date fixed for the hearing. Notwithstanding adoption of such a resolution, if the council proceeds to adopt the changes, (and federal approval is obtained, if necessary) by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule under the revised electoral districts. Any resolution adopted under this subsection, and any changes in electoral district boundaries made under this section shall be submitted to the United States Department of Justice (if the city is covered under Section 5 of the Voting Rights Act of 1965), the State Board of Elections, and to the board conducting the elections for that city.

(b) In adopting any revisal under this section, if the council determines that in order for the plan to conform to the Voting Rights Act of 1965, the number of district seats needs to be increased or decreased, it may do so by following the procedures set forth in Part 4 of Article 5 of Chapter 160A of the General Statutes, except that the ordinance under G.S. 160A-102 may

be adopted at the same meeting as the public hearing, and any referendum on the change under G.S. 160A-103 shall not apply to the municipal election in ~~2001 or 2002.~~two years following a federal decennial census.

(c) If the resolution provided for in subsection (a) of this section is not adopted and:

(1) Proposed changes to the electoral districts are not adopted, or

(2) Such changes are adopted, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received,

by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule using the current electoral districts.

(d) If the council adopts the resolution provided for in subsection (a) of this section and does not adopt the changes, or does adopt the changes, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received, by the end of the third day before the opening of the filing period, the municipal election shall be rescheduled as provided in this subsection and current officeholders shall hold over until their successors are elected and qualified. For cities using the:

(1) Partisan primary and election method under G.S. 163-291, the primary shall be held on the primary election date for county officers in ~~2002;~~the second year following a federal decennial census, the second primary, if necessary, shall be held on the second primary election date for county officers in ~~2002;~~that year, and the general election shall be held on the general election date for county officers in ~~2002;~~that year.

(2) Nonpartisan primary and election method under G.S. 163-294, the primary shall be held on the primary election date for county officers in ~~2002~~ in the second year following a federal decennial census, and the election shall be held on the date for the second primary for county officers in ~~2002;~~that year.

(3) Nonpartisan plurality election method under G.S. 163-292, the election shall be held on the primary election date for county officers in ~~2002;~~the second year following a federal decennial census.

(4) Election and runoff method under G.S. 163-293, the election shall be held on the primary election date for county officers in ~~2002~~the second year following a federal decennial census and the runoffs, if necessary, shall be held on the date for the second primary for county officers in ~~2002.~~that year.

The organizational meeting of the new council may be held at any time after the results of the election have been officially determined and published, but not later than the time and date of the first regular meeting of the council in November ~~2002,~~of the second year following a federal decennial census. except in the case of partisan municipal elections, when the organizational meeting shall be held not later than the time and date of the first regular meeting of the council in December of ~~2002.~~ the second year following a federal decennial census.

(e) This section does not apply to any municipality that, under its charter, is not scheduled to hold an election in the year following a federal decennial census."

SECTION 2. G.S. 163-291(2) reads as rewritten:

"(2) A candidate seeking party nomination for municipal or district office shall file notice of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the third Friday in July preceding the election, except:

a. In ~~2001~~ the year following a federal decennial census, a candidate seeking party nomination for municipal or district office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file his notice of candidacy with the board of elections no earlier than

12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and

b. In ~~2002~~ the second year following a federal decennial census if the election is held then under G.S. 160A-23.1, a candidate seeking party nomination for municipal or district office shall file his notice of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

No person may file a notice of candidacy for more than one municipal office at the same election. If a person has filed a notice of candidacy for one office with the county board of elections under this section, then a notice of candidacy may not later be filed for any other municipal office for that election unless the notice of candidacy for the first office is withdrawn first."

SECTION 3. G.S. 163-294.2(c) reads as rewritten:

"(c) Candidates seeking municipal office shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the first Friday in July and no later than 12:00 noon on the third Friday in July preceding the election, except:

(1) In ~~2001~~ the year following a federal decennial census, candidates seeking municipal office in any city which elects members of its governing board on a district basis, or requires that candidates reside in a district in order to run, shall file their notices of candidacy with the board of elections no earlier than 12:00 noon on the fourth Monday in July and no later than 12:00 noon on the second Friday in August preceding the election; and

(2) In ~~2002~~ the second year following a federal decennial census if the election is held then under G.S. 160A-23.1, candidates seeking municipal office shall file their notices of candidacy with the board of elections at the same time as notices of candidacy for county officers are required to be filed under G.S. 163-106.

Notices of candidacy which are mailed must be received by the board of elections before the filing deadline regardless of the time they were deposited in the mails."

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

SENATE BILL 38:
Municipal District Elections/Census

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	February 23, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	R. Erika Churchill
Analysis of:	S38-CSST-1		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 38 would make permanent the special rules applicable to municipal redistricting following a federal decennial census.***

[As introduced, this bill was identical to H80, as introduced by Rep. Goodwin, which is currently in House Election Law and Campaign Finance Reform, if favorable, Judiciary I.]

BACKGROUND: Each decade since 1980, the General Assembly has enacted a provision to require municipalities that use a district method of election to review the districts to determine whether it would be lawful to hold the next election without revising the districts to correct population imbalances. G.S. 160A-23.1.

If the municipality is subject to Section 5 of the Voting Rights Act of 1965, and thereby required to submit all election changes to the U.S. Department of Justice for 'pre-clearance' prior to implementation, the special rules have allowed the municipality to determine if the redrawing and 'preclearance' can occur before the third business day prior to the opening of the filing period for the municipal election, the municipality can delay the municipal election if the municipality adopts a resolution so stating and conducts a public hearing. If the municipality adopts the resolution delaying the election, the special rules have set forth the schedule for the delayed election.

BILL ANALYSIS: In the past three decades the provisions have set out specific years for the triggering events. The proposed committee substitute would change the triggering event to the federal decennial census.

EFFECTIVE DATE: Effective when it becomes law, but may not be implemented until the session law has received 'preclearance' approval under Section 5 of the Voting Rights of 1965 by the U.S. Department of Justice.

S38-SMST-2(S38-CSST-1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 136*

Short Title:	LEC Term Changes/Ethics Training.	(Public)
Sponsors:	Senators Clodfelter; Brown, Dannelly, and Garrou.	
Referred to:	Judiciary I.	

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR FOUR-YEAR STAGGERED TERMS OF OFFICE FOR MEMBERS OF THE LEGISLATIVE ETHICS COMMITTEE AND TO AMEND THE TIMING OF ETHICS TRAINING FOR LEGISLATORS AS RECOMMENDED BY THE LEGISLATIVE ETHICS COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-99 reads as rewritten:

"**§ 120-99. Creation; composition.**

(a) The Legislative Ethics Committee is created and shall consist of 12 members, six Senators appointed by the President Pro Tempore of the Senate, ~~among them three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader,~~ and six members of the House of Representatives appointed by the Speaker of the ~~House, among them three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader.~~ House. The President Pro Tempore of the Senate shall appoint three members from a list of nominees submitted by the majority leader of the Senate and three members from a list of nominees submitted by the minority leader of the Senate. The Speaker of the House shall appoint three members from a list of nominees submitted by the majority leader of the House and three members from a list of nominees submitted by the minority leader of the House. The nominating majority or minority leader shall submit to the person making the appointment a list of twice the number of vacancies on the Committee that are to be filled from that leader's nominees.

(b) The President Pro Tempore of the Senate and the Speaker of the House as the appointing officers shall each designate a cochair of the Legislative Ethics Committee from the respective officer's ~~appointees.~~appointees to serve as cochair for the current General Assembly, and until the cochair's successor is designated. The cochair appointed by the President Pro Tempore of the Senate shall preside over the Legislative Ethics Committee during the odd-numbered year, and the cochair appointed by the Speaker of the House shall preside in the even-numbered year. ~~However, a~~ A cochair may preside at anytime during the absence of the presiding cochair or upon the presiding cochair's designation. In the event a cochair is unable to act as cochair on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the respective officer shall designate from that officer's appointees a member to serve as cochair for that specific matter.

(c) Repealed by Session Laws 2006-201, s. 8, effective January 1, 2007."

SECTION 2. G.S. 120-100 reads as rewritten:

"**§ 120-100. Term of office; vacancies.**

(a) Appointments to the Legislative Ethics Committee shall be made immediately after the convening of the regular session of the General Assembly in odd-numbered ~~years, and appointees shall serve until the expiration of their then current terms as members of the General Assembly.~~years. The term of office for members of the Legislative Ethics Committee shall be four years from the date of the convening of the General Assembly in which the member is appointed to the Committee. Members shall not serve two consecutive full terms.

(b) A vacancy occurs on the Legislative Ethics Committee when a member resigns, is removed by the appointing officer from the Committee, or is no longer a member of the General Assembly. A vacancy occurring for any reason during a term shall be filled for the unexpired term by the authority making the appointment which caused the vacancy, and the person appointed to fill the vacancy shall, if possible, be a member of the same political party as the member who caused the ~~vacancy.~~vacancy, from a list of two nominees submitted by that party's leader.

(c) In the event a member of the Legislative Ethics Committee is unable to act on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the appointing officer may appoint another member of the respective chamber from a list submitted by the majority leader or minority leader who nominated the member who is unable to act on the matter to serve as a member of the Legislative Ethics Committee for the specific matter only. If on any specific matter, the number of members of the Legislative Ethics Committee who are unable to act on a specific matter exceeds four members, the appropriate appointing officer shall appoint other members of the General Assembly to serve as members of the Legislative Ethics Committee for that specific matter only."

SECTION 3. Notwithstanding G.S. 120-100(a) as amended in Section 2 of this act, legislators appointed as members of the Legislative Ethics Committee for the 2009 General Assembly shall serve initial terms as follows:

(1) Two senators appointed by the President Pro Tempore of the Senate upon the recommendation of the majority leader of the Senate and one senator appointed by the President Pro Tempore of the Senate upon the recommendation of the minority leader of the Senate shall be designated by the President Pro Tempore as having a term of two years. Two senators appointed by the President Pro Tempore of the Senate upon the recommendation of the minority leader of the Senate and one senator appointed by the President Pro Tempore of the Senate upon the recommendation of the majority leader of the Senate shall be designated by the President Pro Tempore as having a term of four years.

(2) Two representatives appointed by the Speaker of the House upon the recommendation of the majority leader of the House and one representative appointed by the Speaker of the House upon the recommendation of the minority leader of the House shall be designated by the Speaker as having a term of two years. Two representatives appointed by the Speaker of the House upon the recommendation of the minority leader of the House and one representative appointed by the Speaker of the House upon the recommendation of the majority leader of the House shall be designated by the Speaker as having a term of four years.

SECTION 4. G.S. 138A-14(c) reads as rewritten:

"(c) The Commission, jointly with the Committee, shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment, or employment and shall offer periodic refresher presentations as the Commission and the Committee deem appropriate. Every legislator ~~and legislative employee~~ shall participate in an ethics presentation approved by the Commission and Committee within

~~three~~ two months of either the convening of the General Assembly to which the legislator is elected or within two months of the legislator's appointment, whichever is later. ~~legislative employee's election, reelection, appointment, or~~Every legislative employee shall participate in an ethics presentation approved by the Commission and Committee within three months of employment, and ~~every legislative employee~~ shall attend refresher ethics education presentations at least every two years thereafter, in a manner as the Commission and Committee deem appropriate."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 136*
PROPOSED COMMITTEE SUBSTITUTE S136-CSST-3 [v.2]

2/23/2009 7:06:14 PM

Short Title: LEC Term Changes/Ethics Training. (Public)

Sponsors:

Referred to:

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR FOUR-YEAR STAGGERED TERMS OF OFFICE FOR MEMBERS OF THE LEGISLATIVE ETHICS COMMITTEE AND TO AMEND THE TIMING OF ETHICS TRAINING FOR LEGISLATORS AS RECOMMENDED BY THE LEGISLATIVE ETHICS COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-99 reads as rewritten:

"**§ 120-99. Creation; composition.**

(a) The Legislative Ethics Committee is created and shall consist of 12 members, six Senators appointed by the President Pro Tempore of the Senate, ~~among them three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader,~~ and six members of the House of Representatives appointed by the Speaker of the ~~House, among them three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader.~~ House. The President Pro Tempore of the Senate shall appoint three members from a list of nominees submitted by the majority leader of the Senate and three members from a list of nominees submitted by the minority leader of the Senate. The Speaker of the House shall appoint three members from a list of nominees submitted by the majority leader of the House and three members from a list of nominees submitted by the minority leader of the House. The nominating majority or minority leader shall submit to the person making the appointment a list of twice the number of vacancies on the Committee that are to be filled from that leader's nominees.

(b) The President Pro Tempore of the Senate and the Speaker of the House as the appointing officers shall each designate a cochair of the Legislative Ethics Committee from the respective officer's ~~appointees.~~appointees to serve as cochair for the current General Assembly, and until the cochair's successor is designated. The cochair appointed by the President Pro Tempore of the Senate shall preside over the Legislative Ethics Committee during the odd-numbered year, and the cochair appointed by the Speaker of the House shall preside in the even-numbered year. ~~However, a~~ A cochair may preside at anytime during the absence of the presiding cochair or upon the presiding cochair's designation. In the event a cochair is unable to act as cochair on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the respective officer shall designate from that officer's appointees a member to serve as cochair for that specific matter.

(c) Repealed by Session Laws 2006-201, s. 8, effective January 1, 2007."

SECTION 2. G.S. 120-100 reads as rewritten:

"**§ 120-100. Term of office; vacancies.**

(a) Appointments to the Legislative Ethics Committee shall be made immediately after the convening of the regular session of the General Assembly in odd-numbered ~~years, and appointees shall serve until the expiration of their then-current terms as members of the General Assembly.~~years. The term of office for members of the Legislative Ethics Committee shall be four years from the date of the convening of the General Assembly in which the member is appointed to the Committee. Members shall not serve two consecutive full terms.

(b) A vacancy occurs on the Legislative Ethics Committee when a member resigns or is no longer a member of the General Assembly. A vacancy occurring for any reason during a term shall be filled for the unexpired term by the authority making the appointment which caused the vacancy, and the person appointed to fill the vacancy shall, if possible, be a member of the same political party as the member who caused the ~~vacancy.~~vacancy, from a list of two nominees submitted by that party's leader.

(c) In the event a member of the Legislative Ethics Committee is unable to act on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the appointing officer may appoint another member of the respective chamber from a list of two members submitted by the majority leader or minority leader who nominated the member who is unable to act on the matter to serve as a member of the Legislative Ethics Committee for the specific matter only. If on any specific matter, the number of members of the Legislative Ethics Committee who are unable to act on a specific matter exceeds four members, the appropriate appointing officer shall appoint other members of the General Assembly to serve as members of the Legislative Ethics Committee for that specific matter only."

SECTION 3. Notwithstanding G.S. 120-100(a) as amended in Section 2 of this act, legislators appointed as members of the Legislative Ethics Committee for the 2009 General Assembly shall serve initial terms as follows:

(1) Two senators appointed by the President Pro Tempore of the Senate upon the recommendation of the minority leader of the Senate and one senator appointed by the President Pro Tempore of the Senate upon the recommendation of the majority leader of the Senate shall be designated by the President Pro Tempore as having a term of two years. Two senators appointed by the President Pro Tempore of the Senate upon the recommendation of the majority leader of the Senate and one senator appointed by the President Pro Tempore of the Senate upon the recommendation of the minority leader of the Senate shall be designated by the President Pro Tempore as having a term of four years.

(2) Two representatives appointed by the Speaker of the House upon the recommendation of the minority leader of the House and one representative appointed by the Speaker of the House upon the recommendation of the majority leader of the House shall be designated by the Speaker as having a term of two years. Two representatives appointed by the Speaker of the House upon the recommendation of the majority leader of the House and one representative appointed by the Speaker of the House upon the recommendation of the minority leader of the House shall be designated by the Speaker as having a term of four years.

SECTION 4. G.S. 138A-14(c) reads as rewritten:

"(c) The Commission, jointly with the Committee, shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment, or employment and shall offer periodic refresher presentations as the Commission and the Committee deem appropriate. Every legislator ~~and legislative employee~~

shall participate in an ethics presentation approved by the Commission and Committee within ~~three~~ two months of either the convening of the General Assembly to which the legislator is elected or within two months of the legislator's appointment, whichever is later. ~~legislative employee's election, reelection, appointment, or~~Every legislative employee shall participate in an ethics presentation approved by the Commission and Committee within three months of employment, and ~~every legislative employee~~ shall attend refresher ethics education presentations at least every two years thereafter, in a manner as the Commission and Committee deem appropriate."

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

SENATE BILL 136: LEC Term Changes/Ethics Training

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	February 23, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	R. Erika Churchill
Analysis of:	S136-CSST-3		Committee Counsel

SUMMARY: ***The proposed committee substitute would create 4 year staggered terms for the membership of the Legislative Ethics Committee, and clarify the time frame for mandatory ethics training for legislators.***

[As introduced, this bill was identical to H104, as introduced by Reps. Glazier, Lucas, Stam, McGee, which is currently in House Ethics, if favorable, Judiciary I.]

CURRENT LAW:

LEC Membership. The Legislative Ethics Committee consists of 12 members, six from each chamber. The appointments are made by the President Pro Tem and Speaker, from lists of six each submitted by the majority and minority leaders in the respective chambers. G.S. 120-99. Once appointed, the members serve until the expiration of their then-current terms as members of the General Assembly. G.S. 120-100.

Mandatory Ethics Training. Legislators and legislative employees are required to attend basic ethics education and awareness presentations upon election, reelection, appointment, or employment. Legislators and legislative employees are to attend these classes within three months of election, reelection, appointment, or employment. Legislative employees are to attend refresher classes at least every two years thereafter. G.S. 138A-14. Generally, election of legislators occurs in November of even-numbered years. The General Assembly begins a new session the third Wednesday of January in the odd-numbered years.

BILL ANALYSIS: The proposed committee substitute would do all of the following:

- Provide that members of the Legislative Ethics Committee serve for a term of four years, with no option to serve for two consecutive terms.
- Provide for staggering of the existing membership of the LEC, to implement the four year terms. Of the current membership, six would serve a term of two years and six would serve a term of 4 years. Of those members serving a two year term, the majority leaders in both chambers would make recommendation for two members, and the minority leaders four members. Of those members serving a four year term, the majority leaders in both chambers would make recommendation for four members, and the minority leaders two members.
- Provide that in the future, the majority and minority leaders would make recommendations to the President Pro Tem and Speaker of twice the number of vacancies slotted.
- Clarify that the time frame for legislator's mandatory ethics education is two months from the convening of the General Assembly.

EFFECTIVE DATE: Effective when it becomes law.

S136-SMST-3(S136-CSST-3) v1

Attachment IX

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 136*

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

S136-AST-1 [v.1]

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

Date 2-24 ,2009

Senator Clodfelter

moves to amend the bill on page 1, line 34 by inserting the following at the end of that line:

"(d) It is the intent of the General Assembly that the composition of the Legislative Ethics Committee be bipartisan in equal numbers. To that extent, the recommendations of the majority and minority leaders shall be modified according to the vacancies created under G.S. 120-100(a).".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT *Attachment X*

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 2-24-09

S. B. No. 136 ✓ Amendment No. _____

COMMITTEE SUBSTITUTE _____ (to be filled in by Principal Clerk)

Rep.)
) Clodfelter
Sen.)

moves to amend the bill on page 1, line 34

( ) WHICH CHANGES THE TITLE

by inserting the following at the end of that line:

"(d) The appointments of the President Pro Tempore of the Senate and the Speaker of the House shall ensure that the composition of the Legislative Ethics Committee is bipartisan in equal numbers."

SIGNED Daniel McClodfelter

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee
Name of Committee

February 24, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Feb 24, 09	Senate Judiciary
Cameron Henley	Electricities of NC
Harry Hutaff	N.C.B.A.
Charmaine Fuller	CJPC
Anthony Glass	Treasurer's Office
Robert G. Culpepper	R. Clark & Assoc.
Paula Wolf	Paulatics
[signature]	RANT & [illegible]

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee
Name of Committee

February 24, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Daniel Baum	K+L Gates
Patrick Bafflin	NARAL
Leslie Arnold	SOG-Daily Bulletin
Ralph Gable	SBOE
Johnnie McLean	SBE
Becki Gray	John Locke Foundation

SENATE JUDICIARY I COMMITTEE
(Civil)

March 5, 2009
10:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Thursday, March 5, 2009, in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin Nesbitt, Vice-Chairmen Dan Clodfelter, Vice-Chairman Pete Brunstetter, Vice-Chairman R. C. Soles, and Vice Chairman Josh Stein; members Senators Charlie Albertson, Phil Berger, Andrew Brock, Harry Brown, Debbie Clary, David Hoyle, Ellie Kinnaird, Floyd McKissick, David Rouzer, and Jerry Tillman. Staff Counsel Erika Churchill, Giles Perry, Susan Sitze, and Bill Patterson, and Committee Assistant Jan Lee.

In the absence of Chairman Martin Nesbitt, Vice Chairman Senator Soles called the meeting to order and introduced the pages serving the meeting; Joseph Clay from Rutherford County sponsored by Senator Clary, James Robinson from Fayetteville sponsored by Senator Rand, Patricia Barnard from Wake County sponsored by Senator Stevens and Alex Clark from Gaston County sponsored by Senator Hoyle.

Senator Soles recognized Senator Harry Brown sponsor of S.B. 64 Motorcycle Learner's Permit to explain the bill. Senator Brown said the bill is a Committee Substitute for S.B. 64 and moved for adoption of the Committee Substitute and it passed unanimously. He said this bill has been introduced due to the many accidents and deaths that have occurred riding a motorcycle. He said community colleges will offer a course on driving a motorcycle safely and will do testing for permits. Senator Brown said this is a safety issue. Staff Counsel Giles Perry assisted Senator Brown in explaining and answering questions. After discussion and questions Senator McKissick presented an amendment changing the effective date for this bill to become law and moved for adoption. The amendment was adopted. John stokes with the Governor's Safety program said the community colleges are prepared to gear up to handle this course. The program is funded through grants. Senator Tillman moved that S.B. 64 Committee Substitute be given a favorable report. The committee approved unanimously.

Chairman Martin Nesbitt arrived at the meeting and presided. He recognized Senator Tillman to explain S.B 65 Amend Computer Solicitation of Child. Senator Tillman said this bill amends the law regarding solicitation of a child by computer to commit an unlawful sex act to include solicitations by other electronic devices as well as computers. Staff Counsel Susan Sitze assisted with the explanation. After much discussion and questions Senator Nesbitt suggested he name a subcommittee to study this bill further, keeping in mind the questions and discussion the committee has had here today and report back to the committee at a later time. The subcommittee will consist of; Senators Tillman, Berger, McKissick and Senator Kinnaird.

Senator Rand sponsor of S.B. 59 – Any Judge/Justice May Perform Marriage, was not present to explain his bill.

The meeting was adjourned at 10:45 a.m.

Copies of SB 64, PCS 64, Bill Analysis for SB 64, Amendment for CB 64, SB 65, Bill Analysis for SB 65, SB 59 are attached to these minutes as attachments 1, 2, 3, 4, 5, 6, 7.

Respectfully submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W. Lee

Janette W. Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 64

Short Title:	Motorcycle Learner's Permit.	(Public)
Sponsors:	Senators Brown and Rand.	
Referred to:	Judiciary I.	

February 5, 2009

A BILL TO BE ENTITLED

AN ACT TO SHORTEN THE DURATION AND AMEND THE REQUIREMENTS FOR A MOTORCYCLE LEARNER'S PERMIT, AND CLARIFY THE REQUIREMENTS FOR OBTAINING A MOTORCYCLE ENDORSEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-7(a1) reads as rewritten:

"(a1) Motorcycles and Mopeds. – To drive a motorcycle, a person shall ~~have:~~have one of the following:

(1) A full provisional license with a motorcycle learner's ~~permit;~~ permit.

(2) A regular drivers license with a motorcycle learner's ~~permit; or~~ permit.

(3) ~~Either:~~

~~a.~~ A full provisional ~~license; or~~ license with a motorcycle endorsement.

~~b.~~

(4) A regular drivers license, with a motorcycle endorsement.

To obtain a motorcycle endorsement, a person shall demonstrate competence to drive a motorcycle by passing a riding skills test administered by the Division or by providing proof of successful completion of the North Carolina Motorcycle Safety Education Program Basic Rider Course or Experienced Rider Course. The person shall pay the fee set in subsection (i) of this section for a motorcycle endorsement. Subsection (a2) of this section sets forth the requirements for a motorcycle learner's permit.

~~To obtain a motorcycle endorsement, a person shall demonstrate competence to drive a motorcycle by:~~

~~(1) Passing a road test;~~

~~(2) Passing a written or oral test concerning motorcycles; and~~

~~(3) Paying the fee for a motorcycle endorsement.~~

Neither a drivers license nor a motorcycle endorsement is required to drive a moped."

SECTION 2. G.S. 20-7(a2) reads as rewritten:

"(a2) Motorcycle Learner's Permit. – The following persons are eligible for a motorcycle learner's permit:

(1) A person who is at least 16 years old but less than 18 years old and has a full provisional license issued by the Division.

(2) A person who is at least 18 years old and has a license issued by the Division.

To obtain a motorcycle learner's permit, an applicant shall pass a vision test, a road sign test, and a written test specified by the Division. An applicant who is less than 18 years old, or any applicant who has held a valid drivers license for less than two years, shall successfully complete the North Carolina Motorcycle Safety Education Program Basic Rider Course. A

motorcycle learner's permit expires ~~18 months~~ six months after it is ~~issued.~~ issued and may be renewed for one additional six-month period. The holder of a motorcycle learner's permit may not drive a motorcycle with a passenger. The fee for a motorcycle learner's permit is the amount set in G.S. 20-7(l) for a learner's permit."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 64
PROPOSED COMMITTEE SUBSTITUTE S64-CSRW-3 [v.4]

3/4/2009 3:20:35 PM

Short Title: Motorcycle Learner's Permit. (Public)

Sponsors:

Referred to:

February 5, 2009

A BILL TO BE ENTITLED

AN ACT TO SHORTEN THE DURATION AND AMEND THE REQUIREMENTS FOR A MOTORCYCLE LEARNER'S PERMIT, AND CLARIFY THE REQUIREMENTS FOR OBTAINING A MOTORCYCLE ENDORSEMENT.

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(1) A full provisional license with a motorcycle learner's ~~permit;~~ permit.

(2) A regular drivers license with a motorcycle learner's ~~permit; or~~ permit.

(3) ~~Either:~~

~~a.~~ A full provisional ~~license; or~~ license with a motorcycle endorsement.

~~b.~~

(4) A regular drivers license, with a motorcycle endorsement.

To obtain a motorcycle endorsement, a person shall demonstrate competence to drive a motorcycle by passing a written or oral test concerning motorcycles and providing proof of successful completion of one of the following:

(1) The Motorcycle Safety Foundation Basic Rider Course or Experienced Rider Course.

(2) The North Carolina Motorcycle Safety Education Program Basic Rider Course or Experienced Rider Course.

(3) Any course approved by the Commissioner.

The person shall pay the fee set in subsection (i) of this section for a motorcycle endorsement. A person less than 18 years of age with a motorcycle endorsement may not drive a motorcycle with a passenger. Subsection (a2) of this section sets forth the requirements for a motorcycle learner's permit.

~~To obtain a motorcycle endorsement, a person shall demonstrate competence to drive a motorcycle by:~~

~~(1) Passing a road test;~~

~~(2) Passing a written or oral test concerning motorcycles; and~~

~~(3) Paying the fee for a motorcycle endorsement.~~

Neither a drivers license nor a motorcycle endorsement is required to drive a moped."

SECTION 2. G.S. 20-7(a2) reads as rewritten:

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(1) A person who is at least 16 years old but less than 18 years old and has a full provisional license issued by the Division.

(2) A person who is at least 18 years old and has a license issued by the Division.

To obtain a motorcycle learner's permit, an applicant shall pass a vision test, a road sign test, and a written test specified by the Division. An applicant who is less than 18 years old, or any applicant who has held a valid drivers license for less than two years, shall successfully complete the Motorcycle Safety Foundation Basic Rider Course or the North Carolina Motorcycle Safety Education Program Basic Rider Course. A motorcycle learner's permit expires ~~18 months~~ six months after it is ~~issued.~~ issued and may be renewed for one additional six-month period. The holder of a motorcycle learner's permit may not drive a motorcycle with a passenger. The fee for a motorcycle learner's permit is the amount set in G.S. 20-7(l) for a learner's permit."

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

SENATE BILL 64:
Motorcycle Learner's Permit

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 2, 2009
Introduced by:	Sen. Brown	**Prepared by:**	Giles S. Perry
Analysis of:	PCS to First Edition S64-CSRW-3		Committee Counsel

SUMMARY: Senate Bill 64 (PCS) makes changes to the law concerning motorcycle endorsements and motorcycle learner's permits.

CURRENT LAW: Under current law, to obtain a **motorcycle endorsement**, an applicant must:

- hold a full provisional or regular drivers license.
- pass a road test.
- pass a written or oral test concerning motorcycles.
- pay the required fee ($1.75/year).

To obtain a **motorcycle learner's permit** under current law, an applicant must:

- hold a full provisional or regular drivers license.
- pass a vision, road sign, and written test specified by DMV.
- pay the required fee ($15).

The permit is valid for 18 months, and there is no limit on renewal.

BILL ANALYSIS: Senate Bill 64 (PCS) changes the current law as follows:

For **motorcycle endorsements**, the bill would require an applicant to demonstrate competence to drive a motorcycle by providing proof of successful completion of one of the following:

(1) The Motorcycle Safety Foundation Basic Rider Course or Experienced Rider Course.

(2) The North Carolina Motorcycle Safety Education Program Basic Rider Course or Experienced Rider Course.

(3) Any course approved by the Commissioner of Motor Vehicles.

In addition, the bill would prohibit motorcycle endorsement holders under age 18 from having passengers.

For a **motorcycle learner's permit**, the bill would shorten the duration of a motorcycle learner's permit to 6 months, and allow only one renewal. In addition, if the applicant for the motorcycle learner's permit is less than 18 years old or has held a valid drivers license for less than two years, the applicant would be required to complete the Motorcycle Safety Foundation Basic Rider Course, the North Carolina Motorcycle Safety Education Program Basic Rider Course, or any other course approved by the DMV Commissioner.

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

DIFFERENCES BETWEEN THE BILL AS INTRODUCED AND THE PROPOSED COMMITTEE SUBSTITUTE:

The proposed committee substitute makes the following changes to the bill as introduced:

- removes DMV from giving riding skills tests for a motorcycle endorsement.
- adds language recognizing the Motorcycle Safety Foundation courses, or any other course approved by the DMV Commissioner (in addition to the North Carolina Motorcycle Safety Education Program courses) as valid to demonstrate competence to drive a motorcycle when applying for a motorcycle endorsement.
- adds back a requirement of current law for a written or oral test concerning motorcycles to obtain the motorcycle endorsement.
- adds language recognizing the Motorcycle Safety Foundation Basic Rider course, or any course approved by the DMV Commissioner (in addition to the North Carolina Motorcycle Safety Education Program Basic Rider course) as valid for use by persons under age 18 or who has held a valid drivers license for less than two years, when applying for a motorcycle learner's permit.
- adds language prohibiting motorcycle endorsement holders under age 18 from having a passenger.

S64-SMRW-15(CSRW-3) v4

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Attachment 4

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 3-5-09

S. B. No. 64 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) McKissick
Sen.)

1 moves to amend the bill on page 2, line 16
2 ( ) WHICH CHANGES THE TITLE
3 by _____
4 rewriting that line to read:
5 _____
6 "Section 3. This act becomes
7 effective January 1, 2010."
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 65

Short Title:	Amend Computer Solicitation of Child.	(Public)
Sponsors:	Senators Tillman; Atwater, Blake, Brock, Brown, Brunstetter, Clary, Davis, Hunt, Jacumin, Kinnaird, Preston, Purcell, Queen, Rucho, Snow, and Weinstein.	
Referred to:	Judiciary I.	

February 5, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING SOLICITATION OF A CHILD BY COMPUTER TO COMMIT AN UNLAWFUL SEX ACT TO INCLUDE SOLICITATIONS BY OTHER ELECTRONIC DEVICES AS WELL AS COMPUTERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-202.3 reads as rewritten:

"**§ 14-202.3. Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act.**

(a) Offense. – A person is guilty of solicitation of a child by a computer if the person is 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders, or commands, by means of a ~~computer,~~computer or any other device capable of electronic data storage or transmission, a child who is less than 16 years of age and at least 3 years younger than the defendant, or a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least 3 years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act. Consent is not a defense to a charge under this section.

(b) Jurisdiction. – The offense is committed in the State for purposes of determining jurisdiction, if the transmission that constitutes the offense either originates in the State or is received in the State.

(c) Punishment. – A violation of this section is punishable as follows:

(1) A violation is a Class H felony except as provided by subdivision (2) of this subsection.

(2) If either the defendant, or any other person for whom the defendant was arranging the meeting in violation of this section, actually appears at the meeting location, then the violation is a Class G felony."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

SENATE BILL 65:
Amend Computer Solicitation of Child

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 3, 2009
Introduced by:	Sen. Tillman	**Prepared by:**	Susan Sitze
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 65 amends the law regarding solicitation of a child by computer to commit an unlawful sex act to include solicitations by other electronic devices as well as computers.

CURRENT LAW: Under G.S. 14-202.3, it is a crime for a person 16 or older to knowingly, with the intent to commit an unlawful sex act, entice, advise, coerce, order or command, by means of a computer, a child (or a person the defendant believes to be a child) who is less than 16 and at least 3 years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act.

Violation of this statute is generally a Class H felony. However, if the defendant, or any other person for whom the defendant was arranging the meeting, actually appears at the meeting location, then violation is a Class G felony.

BILL ANALYSIS: Senate Bill 65 would amend G.S. 14-202.3 to add language including solicitations by a computer or "any other device capable of electronic data storage or transmission". This language would include cell phones, some telephones, and possibly other electronic devices. The offense would still require that the child be solicited using one of these devices, with the intent to commit an unlawful sex act.

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

S 1

SENATE BILL 59

Short Title:	Any Judge/Justice May Perform Marriage.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I.	

February 5, 2009

A BILL TO BE ENTITLED

AN ACT ALLOWING ANY JUDGE OR JUSTICE TO PERFORM MARRIAGE CEREMONIES.

The General Assembly of North Carolina enacts:

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

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

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

(1) a. In the presence of an ordained minister of any religious denomination, a minister authorized by a church, a judge or justice of the trial court or appellate divisions of the General Court of Justice, or a magistrate; and

b. With the consequent declaration by the ~~minister~~ minister, judge or justice of the trial court or appellate divisions of the General Court of Justice, or magistrate that the persons are husband and wife; or

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

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

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

SENATE JUDICIARY I COMMITTEE
(Civil)

March 19, 2009
10:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Thursday, March 19, 2009, in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin Nesbitt, Vice-Chairmen Dan Clodfelter, Pete Brunstetter, R. C. Soles, and Josh Stein; members Senators Phil Berger, Andrew Brock, Harry Brown, Ellie Kinnaird, Vernon Malone, Floyd McKissick, Tony Rand, Richard Stevens, and Jerry Tillman; Staff Counsel Erika Churchill, Giles Perry, Susan Sitze, and Bill Patterson; Committee Assistant Jan Lee.

Chairman Nesbitt called the meeting to order and recognized Senator Tillman to report from the subcommittee appointed to work out changes to S.B. 65 – Amend Computer Solicitation of Child. Senator Tillman explained the changes made and after some discussion Senator Tillman moved for adoption for the Proposed Committee Substitute for S.B. 65. Staff Counsel Susan Sitze explained the Proposed Committee Substitute for S.B. 65, and on motion by Senator Hoyle S.B. 65 was given an unfavorable report and Proposed Committee Substitute for S.B. 65 was given a favorable report unanimously.

Chairman Nesbitt introduced the pages serving the committee meeting; Lauren Kalin, Erica Haggar, and Preston Rodenisel all from Wake County and sponsored by Senator Stevens.

Chairman Nesbitt recognized Senator Rand to explain S.B. 59 – Any Judge/Justice May Perform Marriage. After explanation Senator Clodfelter made the motion to give S.B. 59 a favorable report and it passed unanimously.

Senator Phil Berger was recognized to explain S.B. 159 – Update Funeral Expense Allowance/Estates. Senator Berger said it has been changed and he is presenting a Proposed Committee Substitute. After Senator Berger explained the Proposed Committee Substitute for S.B. 159, Staff Counsel Erika Churchill was recognized to assist in explaining the bill and said the only thing Senator Berger did not mention was the effective date is October 1. 2009. After discussion Senator Rand moved for a favorable report to the Proposed Committee Substitute and unfavorable to the original bill and it passed unanimously.

Senator Clodfelter was recognized to explain S.B. 268 – No Elected Official Recommendation/Certain Counties/Notaries. After Senator Clodfelter explained the bill he was assisted by Staff Counsel Erika Churchill to further explain. After some discussion Senator Clodfelter moved to give the bill a favorable report and it passed.

Senator Clodfelter was recognized to explain S.B. 293 – Juror Qualifications/Electronic Juror List. Senator Clodfelter explained S.B. 293 has become a Proposed Committee Substitute and moved for adoption. It was adopted to be explained and discussed. Senator Clodfelter explained the Proposed Committee Substitute with Staff Counsel Erika Churchill assisting. Senator Rand asked for clarification and after explanation and discussion Senator Clodfelter suggested the bill be displaced. Chairman Nesbitt said Proposed Committee Substitute for S.B. 293 will be displaced and taken up at a later meeting.

The meeting adjourned at 11:00 a.m..

Copies of S.B. 65, PCS for S.B. 65, Bill Analysis for PCS for S.B. 65, S.B. 59, Bill Analysis for S.B. 59, S.B. 159, PCS for 159, Bill Analysis for PCS for S.B. 159, S.B. 268, Bill Analysis for S.B. 268, S.B. 293, PCS for S.B. 293, Bill analysis for S.B. 293.

Respectfully submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W. Lee

Janette W. Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 65

Short Title:	Amend Computer Solicitation of Child.	(Public)
Sponsors:	Senators Tillman; Atwater, Blake, Brock, Brown, Brunstetter, Clary, Davis, Hunt, Jacumin, Kinnaird, Preston, Purcell, Queen, Rucho, Snow, and Weinstein.	
Referred to:	Judiciary I.	

February 5, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING SOLICITATION OF A CHILD BY COMPUTER TO COMMIT AN UNLAWFUL SEX ACT TO INCLUDE SOLICITATIONS BY OTHER ELECTRONIC DEVICES AS WELL AS COMPUTERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-202.3 reads as rewritten:

"**§ 14-202.3. Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act.**

(a) Offense. – A person is guilty of solicitation of a child by a computer if the person is 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders, or commands, by means of a ~~computer,~~computer or any other device capable of electronic data storage or transmission, a child who is less than 16 years of age and at least 3 years younger than the defendant, or a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least 3 years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act. Consent is not a defense to a charge under this section.

(b) Jurisdiction. – The offense is committed in the State for purposes of determining jurisdiction, if the transmission that constitutes the offense either originates in the State or is received in the State.

(c) Punishment. – A violation of this section is punishable as follows:

(1) A violation is a Class H felony except as provided by subdivision (2) of this subsection.

(2) If either the defendant, or any other person for whom the defendant was arranging the meeting in violation of this section, actually appears at the meeting location, then the violation is a Class G felony."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 65
PROPOSED COMMITTEE SUBSTITUTE S65-CSSA-4 [v.1]

3/10/2009 2:37:59 PM

Short Title: Amend Computer Solicitation of Child. (Public)

Sponsors:

Referred to:

February 5, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING SOLICITATION OF A CHILD BY COMPUTER TO COMMIT AN UNLAWFUL SEX ACT TO INCLUDE SOLICITATIONS BY OTHER ELECTRONIC DEVICES AS WELL AS COMPUTERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-202.3 reads as rewritten:

"**§ 14-202.3. Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act.**

(a) Offense. – A person is guilty of solicitation of a child by a computer if the person is ~~16~~18 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders, or commands, by means of a ~~computer,~~computer or any other device capable of electronic data storage or transmission, a child who is less than 16 years of age and at least ~~3~~5 years younger than the defendant, or a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least ~~3~~5 years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act. Consent is not a defense to a charge under this section.

(b) Jurisdiction. – The offense is committed in the State for purposes of determining jurisdiction, if the transmission that constitutes the offense either originates in the State or is received in the State.

(c) Punishment. – A violation of this section is punishable as follows:

(1) A violation is a Class H felony except as provided by subdivision (2) of this subsection.

(2) If either the defendant, or any other person for whom the defendant was arranging the meeting in violation of this section, actually appears at the meeting location, then the violation is a Class G felony."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

SENATE BILL 65:
Amend Computer Solicitation of Child

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 12, 2009
Introduced by:	Sen. Tillman	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S65-CSSA-4		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 65 amends the law regarding solicitation of a child by computer to commit an unlawful sex act to include solicitations by other electronic devices as well as computers.***

CURRENT LAW: Under G.S. 14-202.3, it is a crime for a person 16 or older to knowingly, with the intent to commit an unlawful sex act, entice, advise, coerce, order or command, by means of a computer, a child (or a person the defendant believes to be a child) who is less than 16 and at least 3 years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act.

Violation of this statute is generally a Class H felony. However, if the defendant, or any other person for whom the defendant was arranging the meeting, actually appears at the meeting location, then violation is a Class G felony.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 65 would amend G.S. 14-202.3 in two ways:

- By adding language including solicitations by a computer or "any other device capable of electronic data storage or transmission". This language would include cell phones, some telephones, and possibly other electronic devices. The offense would still require that the child be solicited using one of these devices, with the intent to commit an unlawful sex act.
- By changing the age requirement for the offender. The current statute applies to anyone 16 or older who solicits a child under 16 who is at least 3 years younger than the offender. The PCS would change the offense to apply only to **offenders who are 18 or older who solicit a child under 16 who is at least 5 years younger than the offender.**

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

Research Division *O. Walker Reagan, Director* *(919) 733-2578*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 59

Short Title:	Any Judge/Justice May Perform Marriage.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I.	

February 5, 2009

A BILL TO BE ENTITLED

AN ACT ALLOWING ANY JUDGE OR JUSTICE TO PERFORM MARRIAGE CEREMONIES.

The General Assembly of North Carolina enacts:

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

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

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

(1) a. In the presence of an ordained minister of any religious denomination, a minister authorized by a church, a judge or justice of the trial court or appellate divisions of the General Court of Justice, or a magistrate; and

b. With the consequent declaration by the ~~minister~~ minister, judge or justice of the trial court or appellate divisions of the General Court of Justice, or magistrate that the persons are husband and wife; or

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

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

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

SENATE BILL 59:
Any Judge/Justice May Perform Marriage

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 2, 2009
Introduced by:	Sen. Rand	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 59 would allow a judge of the trial court or the appellate court to perform marriages, effective when it becomes law.

CURRENT LAW: Currently, ordained ministers, ministers authorized by a church, and magistrates can perform marriages. Also, any mode of solemnization recognized by any religious denomination, or federally or State recognized Indian tribe is accepted as a valid and sufficient marriage.

BILL ANALYSIS: The bill would add judges and justices of the trial court and judges of the appellate court to list of persons who may perform a marriage ceremony.

EFFECTIVE DATE: Effective when it becomes law.

BACKGROUND: Since 2000, at least 10 bills have been introduced to temporarily allow a judge or justice to perform a marriage. Seven of those bills become law. S.L. 2000-58, S.L. 2001-14, S.L. 2001-62, S.L. 2002-115, S.L. 2003-4, S.L. 2005-56, S.L. 2007-61.

House Bill 16 of the 2009 Session would temporarily allow a retired judge of the General Court of Justice to perform marriages from February 27 until March 1, 2009. That bill is currently in House Ways and Means.

House Bill 494 of the 2009 Session would temporarily allow a judge of the superior court to perform marriages from April 8 – April 15, 2009. That bill is currently in House Appropriations.

S59-SMST-5(e1) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 159

Short Title:	Update Funeral Expense Allowance/Estates.	(Public)
Sponsors:	Senators Berger of Rockingham; Allran, Blake, Brock, Brown, East, Goodall, Hunt, Jacumin, Preston, Snow, Stevens, and Tillman.	
Referred to:	Judiciary I.	

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE PRIORITY FUNERAL EXPENSE ALLOWANCE AND THE GRAVESTONE AUTHORIZATION IN PROBATE PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 28A-19-6(a) reads as rewritten:

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

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

Second class. Funeral expenses to the extent of ~~two thousand five hundred dollars ($2,500).~~ five thousand dollars ($5,000). This limitation shall not include cemetery lot or gravestone. The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable funeral expenses which may be incurred; nor shall the preferential limitation of payment in the amount of ~~two thousand five hundred dollars ($2,500)~~ five thousand dollars ($5,000) be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to his or her beneficiaries.

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

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

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

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

Seventh class. A claim for equitable distribution.

Eighth class. All other claims."

SECTION 2. G.S. 28A-19-9 reads as rewritten:

"**§ 28A-19-9. Gravestone authorized.**

It is lawful for personal representatives to provide suitable gravestones to mark the graves of their testators or intestates, and to pay for the cost of erecting the same and the cost thereof shall be paid as funeral expenses and credited as such in final accounts. The costs thereof shall

be in the sound discretion of the personal representative, having due regard to the value of the estate and to the interests of creditors and needs of the surviving spouse and the heirs and devisees of the estate. Where the personal representative desires to spend more than ~~four hundred dollars ($400.00)~~ one thousand five hundred dollars ($1,500) for such purpose, and the will does not grant specific authority to the personal representative for such expenditures in excess of ~~four hundred dollars ($400.00),~~ one thousand five hundred dollars ($1,500), he shall file his petition before the clerk of the court, and such order as will be made by the court shall specify the amount to be expended for such purpose. Provided, however, that if the net estate is of a value in excess of ~~twenty-five thousand dollars ($25,000),~~ seventy-five thousand dollars ($75,000), the personal representative may, in his discretion, expend not more than ~~eight hundred dollars ($800.00)~~ three thousand dollars ($3,000) for this purpose without securing the order of the court required herein. If the estate is of a value in excess of ~~twenty-five thousand dollars ($25,000)~~ seventy-five thousand ($75,000) and the personal representative desires to spend more than ~~eight hundred dollars ($800.00)~~ three thousand dollars ($3,000) for such purpose, and the will does not grant specific authority for such expenditure he shall file his petition and secure the order of the court herein required before expending funds for such purpose. However, in no event may more than ~~eight hundred dollars ($800.00)~~ three thousand dollars ($3,000) be accounted as gravestone marker cost to be credited as a funeral expense in the final accounts."

SECTION 3. This act becomes effective October 1, 2009, and applies to estates of persons dying on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 159
PROPOSED COMMITTEE SUBSTITUTE S159-CSST-4 [v.4]

3/18/2009 5:25:08 PM

Short Title: Update Funeral Expense Allowance/Estates. (Public)

Sponsors:

Referred to:

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO UPDATE AND CLARIFY THE SECOND CLASS PRIORITY EXPENSES AND THE GRAVESTONE AUTHORIZATION IN PROBATE PROCEEDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 28A-19-6(a) reads as rewritten:

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

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

Second class. Funeral expenses to the extent of ~~two thousand five hundred dollars ($2,500).~~ five thousand dollars ($5,000), costs associated with gravestone markers as provided in G.S. 28A-19-9(a), and reasonable costs for the purchase of a suitable burial place. ~~This limitation shall not include cemetery lot or gravestone.~~ The preferential limitation herein granted shall be construed to be only a limit with respect to preference of payment and shall not be construed to be a limitation on reasonable funeral expenses which may be ~~incurred;~~ incurred. ~~nor shall the~~The preferential limitation ~~of payment~~ herein granted shall not ~~in the amount of two thousand five hundred dollars ($2,500)~~ be diminished by any Veterans Administration, social security or other federal governmental benefits awarded to the estate of the decedent or to his or her beneficiaries.

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

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

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

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

Seventh class. A claim for equitable distribution.

Eighth class. All other claims."

SECTION 2. G.S. 28A-19-9 reads as rewritten:

"**§ 28A-19-9. Gravestone and burial place authorized.**

(a) It is lawful for a personal ~~representatives~~ representative to provide a suitable ~~gravestones~~ gravestone to mark the graves of ~~their testators or intestates,~~ the testator or intestate and to pay for the cost of erecting the ~~same~~ same. ~~and the~~ The cost thereof shall be ~~paid as funeral expenses~~ treated as a second class claim under G.S. 28A-19-6 and credited as such in final accounts. The costs thereof shall be in the sound discretion of the personal representative, having due regard to the value of the estate and to the interests of creditors and needs of the surviving spouse and the heirs and devisees of the estate. Where the personal representative desires to spend more than ~~four hundred dollars ($400.00)~~ one thousand five hundred dollars ($1,500) for ~~such purpose,~~ the purpose of a gravestone and the will does not grant specific authority to the personal representative for such expenditures in excess of ~~four hundred dollars ($400.00), one thousand five hundred dollars ($1,500),~~ that amount, ~~he~~ the personal representative shall file ~~his~~ a petition before the clerk of the court, and such order as will be made by the court shall specify the amount to be expended for such purpose. Provided, however, that if the net estate is of a value in excess of ~~twenty-five thousand dollars ($25,000),~~ seventy-five thousand dollars ($75,000), the personal representative may, in ~~his~~ the personal representative's discretion, expend not more than ~~eight hundred dollars ($800.00)~~ three thousand dollars ($3,000) for this purpose without securing the order of the court required herein. If the estate is of a value in excess of ~~twenty-five thousand dollars ($25,000)~~ seventy-five thousand dollars ($75,000) and the personal representative desires to spend more than ~~eight hundred dollars ($800.00)~~ three thousand dollars ($3,000) for such purpose, and the will does not grant specific authority for such expenditure ~~he~~ the personal representative shall file ~~his~~ a petition and secure the order of the court herein required before expending funds for such purpose. ~~However, in no event may more than eight hundred dollars ($800.00) be accounted as gravestone marker cost to be credited as a funeral expense in the final accounts.~~

(b) It is lawful for a personal representative to provide a suitable burial place for the testator or intestate. The cost of a suitable burial place shall be in the sound discretion of the personal representative, having due regard to the value of the estate and to the interests of creditors and needs of the surviving spouse and the heirs and devisees of the estate, and shall be treated as a second class claim under G.S. 28A-19-6." .

SECTION 3. This act becomes effective October 1, 2009, and applies to estates of individuals dying on or after that date.

SENATE BILL 159:
Update Funeral Expense Allowance/Estates

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 18, 2009
Introduced by:	Sen. Berger of Rockingham	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to First Edition S159-CSST-4		Committee Counsel

SUMMARY: The proposed committee substitute for Senate Bill 159 would clarify and update the second class funeral expense.

CURRENT LAW: The general statutes set forth a priority for the payment of claims by estates. The priority is as follows:

1. Payment of costs and expenses of administration.
2. First class. Liens on property, not to exceed the value of the property.
3. Second class. Funeral expenses up to $2,500. The limitation does not include cemetery lot or gravestone, and is not reduced by any Veterans Administration, social security or other federal governmental benefits awarded.
4. Third class. Taxes and other claims with preference under the federal law.
5. Fourth class. Taxes and other claims with preference under the State law.
6. Fifth class. Court judgments.
7. Sixth class. Wages due to employees of the decedent.
8. Seventh class. Equitable distribution.
9. Eighth class. All other claims.

G.S. 28A-19-9 also authorizes payment for the cost of the suitable gravestones. The cost, not to exceed $400, is to be paid as a funeral expense. If the net value of the estate is over $25,000, the personal representative may spend up to $800 on a suitable gravestone. If the net value is over $25, 000 and the personal representative desire to spend more than $800 on the gravestone, the personal representative may petition the court to spend more. In no event may more than $800 for the gravestone be credited as a funeral expense.

BILL ANALYSIS: The pcs would do the following:

- Increase the second class claim for funeral expenses from $2,500 to $5,000.
- Clarify that included in the second claims are also costs associated with a suitable gravestone and burial place and the amounts paid for those items are not included in the $5,000 for the funeral expense.
- Increase the amount that can be spent on a suitable gravestone without approval of the court from $400 to $1,500 for small estates, and from $800 to $3,000 for larger estates.
- Increase the net value of an estate that would trigger court approval of a higher cost of a gravestone from $25,000 to $75,000.
- Clarify that a personal representative may provide a suitable burial place for the decedent.

EFFECTIVE DATE: October 1, 2009, and applies to estates of individuals dying on or after that date.

S159-SMST-9(CSST-4) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 268

Short Title:	No Elected Off. Recomm./Certain Co./Notaries.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

February 24, 2009

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT OF AN ELECTED OFFICIAL RECOMMENDATION FOR NOTARY PUBLIC APPLICANTS IN COUNTIES WITH MORE THAN FOURTEEN THOUSAND NOTARIES PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 10B-5(b)(9) reads as rewritten:

"(b) A person qualified for a notarial commission shall meet all of the following requirements:

...

(9) Obtain the recommendation of one publicly elected official in North Carolina and submit the recommendation with the application. The requirement of this subdivision shall not apply to any applicant who seeks to receive the oath of office from the register of deeds of a county where more than ~~15,000~~14,000 active notaries public are on record on January 1 of the year when the application is filed."

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

SENATE BILL 268:
No Elected Off. Recomm./Certain Co./Notaries

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 10, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 268 would reduce the number in the exemption from having a recommendation of a publicly elected official from 15,000 to 14,000 active notaries in a county.***

[As introduced, this bill was identical to H402, as introduced by Rep. M. Alexander, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I.]

CURRENT LAW: Notaries public must be commissioned by the Secretary of State's office. The qualifications for notary public are set forth in G.S. 10B-5, and are that the applicant meets all of the following requirements:

(1) Be at least 18 years of age or legally emancipated.
(2) Reside or have a regular place of work or business in North Carolina.
(3) Reside legally in the United States.
(4) Speak, read, and write the English language.
(5) Possess a high school diploma or equivalent.
(6) Pass the course of instruction required by statute, unless the person is a licensed member of the North Carolina State Bar.
(7) Purchase and keep as a reference the most recent manual approved by the Secretary of State that describes the duties and authority of notaries public.
(8) Submit a notarized application containing no significant misstatement or omission of fact.
(9) Obtain the recommendation of one publicly elected official in North Carolina and submit that recommendation with the application. This requirement does not apply to any applicant who seeks to receive the oath of office from the register of deeds of a county where more than 15,000 active notaries public are on record on January 1 of the year when the application is filed.

The notary is commissioned in the county of residence, unless the residence is out of state. If residence is out of state, the notary is commissioned in the county of employment or business.

BILL ANALYSIS: The bill would reduce the number in the exemption from having a recommendation of a publicly elected official from 15,000 to 14,000 active notaries in a county.

EFFECTIVE DATE: Effective when it becomes law.

BACKGROUND: According to the Secretary of State's Office, as of January 1, 2009, only 2 counties have more than 14,000 active notaries public – Wake (15,651) and Mecklenburg (14,089) Counties. The county with the next highest number of active notaries public is Guilford County, with 7,256 notaries.

S268-SMST-7(e1) v2

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
PROPOSED COMMITTEE SUBSTITUTE S293-CSST-5 [v.2]

3/11/2009 3:09:17 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 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, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person.

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:	Senate Judiciary I	**Date:**	March 16, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to First Edition S293-CSST-5		Committee Counsel

SUMMARY: Senate Bill 293 would do the following:

- ***Remove the qualification of hearing for potential jurors.***
- ***Permit Registers of Deeds to maintain an electronic copy of the juror list.***

Section 1. – Juror Qualifications.

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, and who has not been adjudged non compos mentis. Anyone failing to meet all of the above stated qualifications is subject to challenge for cause.

The pcs would eliminate the qualification of hearing for potential jurors, and make a conforming change to the interpreters for the deaf statutes. The conforming change 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).

EFFECTIVE DATE: October 1, 2009.

Section 2. – Juror Lists.

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.

The pcs would allow the Register of Deeds to maintain that potential juror list in an electronic format.

EFFECTIVE DATE: When it becomes law.

S293-SMST-8(CSST-5) v1

SENATE JUDICIARY I COMMITTEE
(Civil)

March 26, 2009
10:00 a.m. – Room 1027

The Senate Judiciary I Committee met Thursday, March 26, 2009, in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin Nesbitt, Vice-Chairmen Pete Brunstetter, R.C. Soles, and Josh Stein; members Senators Phil Berger, Andrew Brock, Harry Brown, Ellie Kinnaird, David Rouzer, and Jerry Tillman, Staff Counsel Giles Perry, Susan Sitze, and Bill Patterson; Committee Assistant Jan Lee.

Committee Chairman called the meeting to order and recognized Senator Snow sponsor of S.B. 256 – Clarify Local Government Evacuation Authority, to explain the bill. Senator Snow said this bill clarifies the authority of municipalities and cities to enact ordinances ordering evacuations during a state of emergency, and the immunity of persons or entities engaged in statutorily authorized emergency-related activities. During questions and discussion Senator Phil Berger submitted an amendment and moved for adoption of the amendment. The amendment was adopted and S.B. 256 became a Proposed Committee Substitute. Senator Tillman moved that the original bill be given an unfavorable report and S.B. 256 Proposed Committee Substitute be given a favorable report and it passed unanimously.

The meeting was adjourned.

Copies of S.B. 256, Amendment to S.B. 256, PCS for S.B. 256, Bill analysis for PCS for S.B. 256 are attached to the minutes.

Respectfully submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W. Lee

Janette W. Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 256*

Short Title:	Clarify Local Government Evacuation Authority.	(Public)
Sponsors:	Senators Snow, Atwater, Goss, Nesbitt; and Swindell.	
Referred to:	Judiciary I.	

February 23, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT COUNTIES AND CITIES HAVE THE AUTHORITY TO ORDER EVACUATIONS IN CERTAIN SITUATIONS, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON EMERGENCY PREPAREDNESS AND DISASTER MANAGEMENT RECOVERY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-288.12(b) reads as rewritten:

"(b) The ordinances authorized by this section may permit prohibitions and restrictions:

(1) Of movements of people in public ~~places;~~places, including directing and compelling the evacuation of all or part of the population from any stricken or threatened area within the governing body's jurisdiction, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(2) Of the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate;

(3) Upon the possession, transportation, sale, purchase, and consumption of alcoholic beverages;

(4) Upon the possession, transportation, sale, purchase, storage, and use of dangerous weapons and substances, and gasoline; and

(5) Upon other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.

The ordinances may delegate to the mayor of the municipality the authority to determine and proclaim the existence of a state of emergency, and to impose those authorized prohibitions and restrictions appropriate at a particular time."

SECTION 2. G.S. 166A-14(a) reads as rewritten:

"(a) All functions hereunder and all other activities relating to emergency management as provided for in this Chapter or elsewhere in the General Statutes are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker, firm, partnership, association, or corporation complying with or reasonably attempting to comply with this Article or any order, rule or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity."

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

Attachment 2

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 256 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Sen Berger
Sen.)

1 moves to amend the bill on page 1, line 15
2 ( ) WHICH CHANGES THE TITLE
3 by _____
4 _____
5 _____
6 adding word "public" before the
7 word "premises".
_____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 256*
PROPOSED COMMITTEE SUBSTITUTE S256-CSRW-15 [v.1]

3/25/2009 2:26:31 PM

Short Title: Clarify Local Government Evacuation Authority. (Public)

Sponsors:

Referred to:

February 23, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT COUNTIES AND CITIES HAVE THE AUTHORITY TO ORDER EVACUATIONS IN CERTAIN SITUATIONS, AND THAT THE EMERGENCY MANAGEMENT IMMUNITY STATUTE APPLIES TO THEM, AS RECOMMENDED BY THE JOINT SELECT COMMITTEE ON EMERGENCY PREPAREDNESS AND DISASTER MANAGEMENT RECOVERY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-288.12(b) reads as rewritten:

"(b) The ordinances authorized by this section may permit prohibitions and restrictions:

(1) Of movements of people in public ~~places;~~places, including directing and compelling the evacuation of all or part of the population from any stricken or threatened area within the governing body's jurisdiction, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of a disaster area, the movement of persons within the area, and the occupancy of premises therein;

(2) Of the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate;

(3) Upon the possession, transportation, sale, purchase, and consumption of alcoholic beverages;

(4) Upon the possession, transportation, sale, purchase, storage, and use of dangerous weapons and substances, and gasoline; and

(5) Upon other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.

The ordinances may delegate to the mayor of the municipality the authority to determine and proclaim the existence of a state of emergency, and to impose those authorized prohibitions and restrictions appropriate at a particular time."

SECTION 2. G.S. 166A-14(a) reads as rewritten:

"(a) All functions hereunder and all other activities relating to emergency management as provided for in this Chapter or elsewhere in the General Statutes are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker, firm, partnership, association, or corporation complying with or reasonably attempting to

comply with this Article or any order, rule or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity."

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

SENATE BILL 256:
Clarify Local Government Evacuation Authority

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 25, 2009
Introduced by:	Sen. Snow	**Prepared by:**	Giles S. Perry
Analysis of:	PCS to First Edition S256-CSRW-15		Bill Patterson Committee Counsel

SUMMARY: ***Senate Bill 256 clarifies the authority of municipalities and cities to enact ordinances ordering evacuations during a state of emergency, and the immunity of persons or entities engaged in statutorily authorized emergency-related activities.***

CURRENT LAW: Under current law, the governing body of a municipality or county is authorized to enact ordinances prohibiting and restricting "movements of people in public places" during a state of emergency. (G.S. 14-288.12, G.S. 14-288.13). In addition, under current law, all functions authorized under the North Carolina Emergency Management Act of 1977 (Article 1 of Chapter 166A of the General Statutes), as well as "all other activities relating to emergency management" are declared to be governmental functions for purposes of the statutory immunity granted to persons or entities carrying out such functions or activities. [G.S. 160A-14(a)].

BILL ANALYSIS: Section 1 of the bill clarifies the existing authority of local governments to enact ordinances restricting the movement of people in public places during a state of emergency, by expressly granting authority during a state of emergency to do the following:

- require evacuations.
- prescribe the routes, methods and destinations of evacuations.
- control movements of people into, out of, and within a disaster area.
- control the occupancy of premises within the disaster area.

Because G.S. 14-288.13(b) (counties) incorporates the prohibitions and restrictions included in G.S. 14-288.12(b) (municipalities), the bill's amendment of G.S. 14-288.12(b) accomplishes the same result for both municipalities and counties.

Section 2 of the bill amends G.S. 166A-14(a) to clarify that all activities relating to emergency management, whether provided for in Chapter 166A or elsewhere in the General Statutes, are declared to be governmental functions for purposes of the statutory immunity granted to persons and entities carrying out those emergency management related functions. Section 2 of the bill thus clarifies that the evacuation-related emergency management activities authorized under Section 1 of the bill are "governmental functions" for purposes of statutory immunity granted under G.S. 166A-14(a).

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

S256-SMRW-37(CSRW-15) v1

VISITOR REGISTRATION SHEET

Senate Judiciary I Committee
Name of Committee

March 26, 2009
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leanne Winner	NCSBA
Faith Everett	

SENATE JUDICIARY I COMMITTEE
(Civil)

March 31, 2009
10:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Tuesday, March 31, 2009, in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin Nesbitt, Vice-Chairmen Dan Clodfelter, Pete Brunstetter, R. C. Soles, and Josh Stein; members Senators Phil Berger, Andrew Brock, Harry Brown, Debbie Clary, Clark Jenkins, Ellie Kinnaird, Vernon Malone, Floyd McKissick, David Rouzer, Richard Stevens, and Jerry Tillman; Staff Counsel Erika Churchill, Giles Perry, Susan Sitze, and Bill Patterson; Committee Assistant Jan Lee.

Chairman Nesbitt called the meeting to order and recognized Senator Clodfelter sponsor of S. B. 293 - Juror Qualifications/Electronic Juror List to explain the bill. Senator Clodfelter said this bill came up at an earlier time and changes needed to be made and it is a Proposed Committee Substitute for S.B. 293. He moved that it be adopted for discussion. He said the PCS for S.B. 293 will remove the qualification of hearing for potential jurors and permit Registers of Deeds to maintain an electronic copy of the juror list. He also pointed out each committee member has been given a letter containing information on what some other states have done. Erika Churchill assisted with the explanation. After questions and discussion a motion was made to give the Proposed Committee Substitute a favorable report and unfavorable to the original bill and it passed unanimously..

Chairman Nesbitt recognized Senator Clodfelter sponsor of S.B. 484 – Auditor Ex Officio Duties, to explain the bill and he said this bill removes the State Auditor from an information technology services dispute panel, and the Liability Insurance Trust Fund Council. Mr. Dennis Patterson with the Auditor's Office was introduced and assisted with the explanation of the bill. After some discussion a motion was made to give S.B. 484 a favorable report and it passed unanimously.

Chairman Nesbitt recognized Senator Brunstetter sponsor of S. B. 412 – Modify NC Limited Liability Company Act. Senator Brunstetter said S.B. 412 has been amended and is being presented as a Proposed Committee Substitute and moved for adoption. The committee voted favorably for adoption of S.B. 412 Proposed Committee Substitute to be discussed. Senator Brunstetter explained the PCS for S.B. 412 would make technical and clarifying changes to the North Carolina Limited Liability Company Act. Erica Churchill and someone from the Bar Association assisted with the explanation of the bill. After questions and discussion Senator Clodfelter sent forth an amendment and moved for adoption of the amendment and it passed unanimously. A motion was made to give the Proposed Committee Substitute a favorable report and the committee voted unanimously.

Chairman Nesbitt recognized Senator Clodfelter sponsor of S.B 513 Notice of Hearing/Unsupervised Probation to explain the bill. Senator Clodfelter said this bill is now a Proposed Committee Substitute and moved for adoption to be discussed and the committee voted for the adoption. Senator Clodfelter said the Proposed Committee Substitute for S.B 513 authorizes service by mail of notices of hearings on violations of unsupervised probation and Erica Churchill assisted with the explanation. After questions and discussion a motion was made to give the Proposed Committee Substitute for S.B. 513 a favorable report and it passed unanimously.

Vice-Chairman Clodfelter was asked to preside due to Chairman Nesbitt needing to explain his S.B. 633 – Stipulation for Final Decision by OAH. Chairman Nesbitt said S.B. 633 would treat an order disposing of a contested case by stipulation as a final decision. Judge Mann was present and assisted in explaining the bill and answering questions. After discussion and questions Senator Kinnaird moved to give the bill a favorable report and the committee voted unanimously.

The meeting adjourned at 11:00 a.m.

Copies of S.B. 293, PCS for S.B. 293, Bill Analysis for S.B. 293, handout for 293, S.B 484, Bill Analysis for S.B. 484, S.B. 412, Amendment for S.B. 412, PCS for S.B. 412, Bill Analysis for PCS for S.B. 412, S.B. 484, Bill Analysis for S.B. 484, S.B. 513, PCS for S.B. 513, Bill Analysis for S.B. 513, S.B. 633, Bill Analysis for S.B. 633.

Respectfully submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W. Lee

Janette W. Lee
Committee Assistant

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
PROPOSED COMMITTEE SUBSTITUTE S293-CSST-5 [v.4]

3/25/2009 2:58:18 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 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:	Senate Judiciary I	**Date:**	March 25, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	R. Erika Churchill Committee Counsel
Analysis of:	PCS to First Edition. S293-CSST-5v4		

SUMMARY: Senate Bill 293 would do the following:

- ***Remove the qualification of hearing for potential jurors.***
- ***Permit Registers of Deeds to maintain an electronic copy of the juror list.***

Section 1. – Juror Qualifications.

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, and who has not been adjudged non compos mentis. Anyone failing to meet all of the above stated qualifications is subject to challenge for cause.

The pcs would eliminate the qualification of hearing for potential jurors, and make 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.

EFFECTIVE DATE: October 1, 2009.

Section 2. – Juror Lists.

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.

The pcs would allow the Register of Deeds to maintain that potential juror list in an electronic format.

EFFECTIVE DATE: When it becomes law.

From: Sen. Richard Stevens
Sent: Monday, March 23, 2009 05:31 PM
To: Sen. Daniel Clodfelter; Sen. Martin Nesbitt
Cc: Tim Hovis (Research)
Subject: FW: interpreters in the jury room

Some information which may be helpful when Judiciary I discusses SB 293 (Juror Qualifications) again. Jamie Markham is with the UNC School of Government and I had asked him his opinion when I saw him last week.

Richard Stevens

From: Markham, Jamie [mailto:markham@sog.unc.edu]
Sent: Monday, March 23, 2009 07:32 AM
To: Sen. Richard Stevens
Subject: interpreters in the jury room

Dear Senator Stevens,

It was good to meet you the other day at Rebekah's capstone defense. I did a bit of research into your question about the legal issues raised by the presence in the jury room of an interpreter for a deaf juror.

I don't see any relevant cases in North Carolina, but other courts have considered this question. In *United States v. Dempsey*, 830 F.2d 1084 (10th Cir. 1987), for example, the Tenth Circuit affirmed a conviction after determining that an interpreter's presence in the jury room did not (in the absence of any improper behavior by the interpreter) inhibit jury discussions. The *Dempsey* court noted that at least two states (Louisiana and Connecticut) had at that time explicitly authorized interpreters in the jury room for deaf jurors.

It appears that a number of states have enacted similar provisions since that case was decided in 1987–Texas, Massachusetts, Georgia, and Florida, probably among others (I did not do a true 50-state survey). The closest provision in North Carolina is probably G.S. 8B-2, but that section only provides for the appointment of an interpreter when a deaf person is a "party to or a witness in any civil or criminal proceeding," not a juror.

In North Carolina the presence of an alternate (13th) juror in the jury room, even for a few minutes, is reversible error per se. *State v. Bindyke*, 288 N.C. 608 (1975). But I think an appellate court would probably be able to distinguish an extra juror (who has a stake in the deliberations) from a translator (who is a mere facilitator).

I hope this helps, but please let me know if you need additional research on this question.

Sincerely,
Jamie

James Markham
Assistant Professor of Public Law and Government
UNC School of Government

http://sogweb.sog.unc.edu/blogs/ncclaw/
http://twitter.com/jamie_markham

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 484*

Short Title:	Auditor Ex Officio Duties.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE STATE AUDITOR FROM CERTAIN EX OFFICIO DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-33.93 reads as rewritten:

"**§ 147-33.93. Fees; dispute resolution panel.**

In addition to the powers granted pursuant to Article 6B of this Chapter or by any other provision of law, the Office of Information Technology Services may go before a panel consisting of the State ~~Auditor,~~ Treasurer, the State Controller, and the State Budget Officer, or their designees, to resolve disputes concerning services, fees, and charges incurred by State government agencies receiving information technology services from the Office. The State ~~Auditor~~ Treasurer shall adopt rules for the dispute resolution ~~process pursuant to G.S. 147-64.9.~~ process. The decisions of the panel shall be final in the settlement of all fee disputes that come before it."

SECTION 2. G.S. 147-64.6(c)(17) reads as rewritten:

"(c) The Auditor shall be responsible for the following acts and activities:

...

~~(17) The Auditor or the Auditor's designee, in conjunction with the State Controller and the State Budget Officer or their designees, shall handle the resolution of fee disputes between the Office of Information Technology Services and the State agencies receiving information technology services from the Office.~~

...."

SECTION 3. Article 6 of Chapter 147 of the General Statutes is amended by adding a new section to read:

"**§ 147-86.2. Information Technology Services fees; dispute resolution panel.**

The State Treasurer or the State Treasurer's designee, in conjunction with the State Controller and the State Budget Officer or their designees, shall handle the resolution of fee disputes between the Office of Information Technology Services and the State agencies receiving information technology services from the Office."

SECTION 4. G.S. 116-220(c) reads as rewritten:

"(c) The Board is authorized to create a Liability Insurance Trust Fund Council composed of not more than 13 members; one member each shall be appointed by the State Attorney General, ~~the State Auditor,~~ the State Insurance Commissioner, the Director of the Office of State Budget and Management, and the State Treasurer; the remaining members shall be appointed by the Board. Subject to all requirements and limitations of this Article and to any rules and regulations adopted by the Board under the terms of subsection (b) of this section, the Board may delegate to the Liability Insurance Trust Fund Council responsibility and authority

for the administration of the self-insured liability insurance program and of the insurance trust accounts established pursuant to such program."

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

SENATE BILL 484:
Auditor Ex Officio Duties

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 27, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Giles S. Perry
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 484 removes the State Auditor from an information technology services dispute panel, and the Liability Insurance Trust Fund Council.

[As introduced, this bill was identical to H467, as introduced by Rep. Tucker, which is currently in House State Government/State Personnel, if favorable, Science and Technology.]

CURRENT LAW: Under current law: the State Auditor is a member of, or designates an appointee to, the following two groups addressed by this bill:

- An ***information technology services dispute panel***, charged with resolving disputes concerning services, fees, and charges incurred by State government agencies receiving information technology services from the Office of Information Technology Services of the Office of the Governor.
- The ***Liability Insurance Trust Fund Council,*** a 13 member group created by the Board of Governors of the University of North Carolina, that has responsibility for the administration of the University self-insured liability insurance program for health-care practitioners, and related insurance trust accounts, established pursuant to Article 26 of Chapter 116 of the General Statutes.

BILL ANALYSIS: Senate Bill 484:

- removes the State Auditor from the ***information technology services dispute panel***, described above.
- provides that the State Treasurer, or her designee, in conjunction with the State Controller and the State Budget Officer, shall handle the resolution of fee disputes between the Office of Information Technology Services and the State agencies receiving information services from that office.
- removes the State Auditor from the ***Liability Insurance Trust Fund Council***, described above.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 412

Short Title:	Modify NC Limited Liability Company Act.	(Public)
Sponsors:	Senators Brunstetter; Brown, Clodfelter, Hartsell, and Stevens.	
Referred to:	Judiciary I.	

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA LIMITED LIABILITY COMPANY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 57C-1-20 reads as rewritten:

"**§ 57C-1-20. Filing requirements.**

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a domestic or foreign limited liability company must be executed:

(1) By a ~~manager~~ manager, director, or executive of the limited liability company;

(2) If the limited liability company has not been formed or ~~if no initial members of the limited liability company have been identified in the manner provided in this Chapter,~~ if the limited liability company has never had any members, by an organizer; or

(3) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary."

SECTION 2. G.S. 57C-3-01 reads as rewritten:

"**§ 57C-3-01. Admission of members.**

(a) Unless the articles of organization of a limited liability company provide otherwise, each person executing the articles of organization of a limited liability company in the capacity of a member, and each person who is otherwise named in the articles of organization as a member of the limited liability company, becomes a member at the time that the filing by the Secretary of State of the articles of organization of the limited liability company becomes effective.

(b) A person may be admitted as a member of a limited liability company:

(1) In the case of a person acquiring a membership interest ~~directly~~ from the limited liability company, (i) upon being so identified as a member by the organizers of the limited liability company in accordance with ~~G.S. 57C-2-20(c) or~~ G.S. 57C-2-20(c), (ii) ~~upon compliance with~~ as provided in the articles of organization or operating agreement or, if the articles of organization or operating agreement do not so provide, upon the unanimous consent of the ~~members; and~~ members, or (iii) upon being designated or otherwise appointed as a member under G.S. 57C-6-01(4);

(2) In the case of an assignee ~~of~~ or other person having only the rights of an assignee under G.S. 57C-5-02 with respect to an interest of a ~~member, upon~~

~~compliance with the provisions of G.S. 57C-5-04(a).~~ member in a limited liability company, as provided in G.S. 57C-5-04(a); and

(3) In connection with a business entity converting or merging into the limited liability company under Part 1 or Part 2 of Article 9A of this Chapter.

(c) Nothing in this Chapter precludes a person from being a member of a limited liability company because that person has not made, and has no obligation to make, any contributions to the limited liability company and has no right to receive any distributions from the limited liability company or share in any profits or losses of the limited liability company."

SECTION 3. G.S. 57C-4-06 is amended by adding a new subsection to read:

"**§ 57C-4-06. Restrictions on making distributions.**

...

(f) As used in this section, "distribution" does not include amounts constituting reasonable compensation for present or past services and does not include reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program."

SECTION 4. G.S. 57C-5-04 reads as rewritten:

"**§ 57C-5-04. Right of assignee to become a member.**

(a) An assignee of (or other person having only the rights of an assignee under G.S. 57C-5-02 with respect to) an interest in a limited liability company may become a member only with ~~the assignee's consent and, except as otherwise provided in the articles of organization or operating agreement, only if the other members unanimously agree.~~ that person's consent and:

(1) By meeting the requirements provided in the articles of organization or operating agreement;

(2) By the unanimous consent of the members, if the articles of organization or operating agreement do not provide otherwise; or

(3) In the manner permitted under G.S. 57C-6-01(4), if the limited liability company ceases to have any members.

The consent of a member may be evidenced ~~in any manner specified~~ as provided in the articles of organization or operating ~~agreement, but in the absence of such specification, consent shall~~ agreement. If the articles of organization or operating agreement do not provide otherwise, then consent is to be evidenced by a written instrument, dated and signed by the member, or evidenced by a vote taken at a meeting of members.

(b) An assignee who becomes a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, any operating agreements, and this Chapter. Notwithstanding the preceding sentence, unless otherwise provided in a written operating agreement, an assignee who becomes a member is liable for any obligations of his assignor to make contributions under G.S. 57C-4-02 (liability for contribution) but shall not be liable for obligations of his assignor under G.S. 57C-4-07 (liability upon wrongful distribution). However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a member and which could not be ascertained from the articles of organization or a written operating agreement.

(c) Whether or not an assignee of a membership interest becomes a member, the assignor is not released from ~~his~~ liability ~~to the limited liability company~~ that the assignor may have under G.S. 57C-4-02 ~~(liability for contribution) and G.S. 57C-4-07 (liability upon wrongful distribution).~~ or G.S. 57C-4-07."

SECTION 5. G.S. 57C-5-05 reads as rewritten:

"**§ 57C-5-05. Powers of legal representative of a deceased, incompetent, or dissolved member.**

~~Unless otherwise provided in the articles of organization or a written operating agreement, if a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage his person or his property, the member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the member's rights for the purpose of settling his estate or administering his property, including any power the member had under the articles of organization or a written operating agreement to give an assignee the right to become a member. If~~ Unless otherwise provided in the articles of organization or a written operating agreement, if a member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor for the purpose of liquidating, winding up, and making final distributions of the entity's assets to its owners, beneficiaries, or creditors."

SECTION 6. G.S. 57C-6-01 reads as rewritten:

"**§ 57C-6-01. Dissolution.**

A limited liability company is dissolved and its affairs shall be wound up at or upon the first to occur of the following:

(1) The time specified in the articles of organization or a written operating agreement;

(2) The happening of an event specified in the articles of organization or a written operating agreement;

(3) The written consent of all ~~members;~~ members or, if the limited liability company never had any members, a majority of the organizers;

(4) ~~Unless otherwise provided in the articles of organization or a written operating agreement, at such time that the limited liability company no longer has any members. The foregoing to the contrary notwithstanding, unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company shall not be dissolved and is not required to be wound up by reason of any event of withdrawal of the last remaining member if, within 90 days after the event of withdrawal, the assignee or the fiduciary of the estate of the last remaining member agrees in writing that the business of the limited liability company may be continued until the admission of the assignee or the fiduciary of the estate of the member or its designee to the limited liability company as a member, effective as of the occurrence of the event that causes the withdrawal of the last remaining member;~~ The 90th day after the day on which a limited liability company that once had one or more members ceases to have any members, unless within that 90-day period, one or more persons are designated or otherwise admitted, with their consent, as members either as provided by the articles of organization or a written operating agreement or, if the articles of organization or written operating agreement do not so provide, are designated or otherwise admitted as members by the assignee (or other person having only the rights of an assignee under G.S. 57C-5-02 who controls the interest) of the person who was the last member of the limited liability company; or

(5) Entry of a decree of judicial dissolution under G.S. 57C-6-02, or the filing by the Secretary of State of a certificate of dissolution under G.S. 57C-6-03."

SECTION 7. G.S. 57C-6-06.1 is repealed.

SECTION 8. G.S. 57C-10-03 reads as rewritten:

"**§ 57C-10-03. Rules of ~~construction.~~ construction; policy.**

(a) The rules that statutes in derogation of the common law are to be strictly construed shall have no application to this Chapter.

(b) The law of estoppel shall apply to this Chapter.

(c) The law of agency shall apply under this Chapter.

(d) This Chapter shall not be construed so as to impair the obligations of any contract existing when this Chapter goes into effect, nor to affect any action or proceedings begun or right accrued before this Chapter takes effect.

(e) It is the policy of this Chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements."

SECTION 9. This act becomes effective January 1, 2010.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **Attachment 8**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 3-31-09

S. B. No. 412 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) Clodfelter

moves to amend the bill on page 4, line 8

( ) WHICH CHANGES THE TITLE

by deleting "It" and substituting "Except as ~~provided~~ otherwise provided in this Chapter, it"

SIGNED Daniel G. Clodfelter

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 412
PROPOSED COMMITTEE SUBSTITUTE S412-CSST-8 [v.1]

3/23/2009 3:51:53 PM

Short Title: Modify NC Limited Liability Company Act. (Public)

Sponsors:

Referred to:

March 5, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA LIMITED LIABILITY COMPANY ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 57C-1-20 reads as rewritten:

"**§ 57C-1-20. Filing requirements.**

(a) A document required or permitted by this Chapter to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted on behalf of a domestic or foreign limited liability company must be executed:

(1) By a ~~manager~~ manager, director, or executive of the limited liability company;

(2) If the limited liability company has not been formed or ~~if no initial members of the limited liability company have been identified in the manner provided in this Chapter,~~ if the limited liability company has never had any members, by an organizer; or

(3) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary."

SECTION 2. G.S. 57C-3-01 reads as rewritten:

"**§ 57C-3-01. Admission of members.**

(a) Unless the articles of organization of a limited liability company provide otherwise, each person executing the articles of organization of a limited liability company in the capacity of a member, and each person who is otherwise named in the articles of organization as a member of the limited liability company, becomes a member at the time that the filing by the Secretary of State of the articles of organization of the limited liability company becomes effective.

(b) A person may be admitted as a member of a limited liability company:

(1) In the case of a person acquiring a membership interest ~~directly~~ from the limited liability company, (i) upon being so identified as a member by the organizers of the limited liability company in accordance with ~~G.S. 57C-2-20(c) or~~ G.S. 57C-2-20(c), (ii) ~~upon compliance with~~ as provided in the articles of organization or operating agreement or, if the articles of organization or operating agreement do not so provide, upon the

unanimous consent of the ~~members; and~~ members, or (iii) upon being designated or otherwise appointed as a member under G.S. 57C-6-01(4);

(2) In the case of an assignee ~~of~~ or other person having only the rights of an assignee under G.S. 57C-5-02 with respect to an interest of a ~~member, upon compliance with the provisions of G.S. 57C-5-04(a).~~ member in a limited liability company, as provided in G.S. 57C-5-04(a); and

(3) In connection with a business entity converting or merging into the limited liability company under Part 1 or Part 2 of Article 9A of this Chapter.

(c) Nothing in this Chapter precludes a person from being a member of a limited liability company because that person has not made, and has no obligation to make, any contributions to the limited liability company and has no right to receive any distributions from the limited liability company or share in any profits or losses of the limited liability company."

SECTION 3. G.S. 57C-4-06 is amended by adding a new subsection to read:

"**§ 57C-4-06. Restrictions on making distributions.**

...

(f) As used in this section, "distribution" does not include amounts constituting reasonable compensation for present or past services and does not include reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program."

SECTION 4. G.S. 57C-5-04 reads as rewritten:

"**§ 57C-5-04. Right of assignee to become a member.**

(a) An assignee of (or other person having only the rights of an assignee under G.S. 57C-5-02 with respect to) an interest in a limited liability company may become a member only with ~~the assignee's consent and, except as otherwise provided in the articles of organization or operating agreement, only if the other members unanimously agree.~~ that person's consent and:

(1) By meeting the requirements provided in the articles of organization or operating agreement;

(2) By the unanimous consent of the members, if the articles of organization or operating agreement do not provide otherwise; or

(3) In the manner permitted under G.S. 57C-6-01(4), if the limited liability company ceases to have any members.

The consent of a member may be evidenced ~~in any manner specified~~ as provided in the articles of organization or operating ~~agreement, but in the absence of such specification, consent shall~~ agreement. If the articles of organization or operating agreement do not provide otherwise, then consent is to be evidenced by a written instrument, dated and signed by the member, or evidenced by a vote taken at a meeting of members.

(b) An assignee who becomes a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, any operating agreements, and this Chapter. Notwithstanding the preceding sentence, unless otherwise provided in a written operating agreement, an assignee who becomes a member is liable for any obligations of his assignor to make contributions under G.S. 57C-4-02 (liability for contribution) but shall not be liable for obligations of his assignor under G.S. 57C-4-07 (liability upon wrongful distribution). However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a member and which could not be ascertained from the articles of organization or a written operating agreement.

(c) Whether or not an assignee of a membership interest becomes a member, the assignor is not released from ~~his~~ liability ~~to the limited liability company~~ that the assignor may have under G.S. 57C-4-02 ~~(liability for contribution) and G.S. 57C-4-07 (liability upon wrongful distribution).~~ or G.S. 57C-4-07."

SECTION 5. G.S. 57C-5-05 reads as rewritten:

"**§ 57C-5-05. Powers of legal representative of a ~~deceased, incompetent, or~~ dissolved member.**

~~Unless otherwise provided in the articles of organization or a written operating agreement, if a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage his person or his property, the member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the member's rights for the purpose of settling his estate or administering his property, including any power the member had under the articles of organization or a written operating agreement to give an assignee the right to become a member. If~~ Unless otherwise provided in the articles of organization or a written operating agreement, if a member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor for the purpose of liquidating, winding up, and making final distributions of the entity's assets to its owners, beneficiaries, or creditors."

SECTION 6. G.S. 57C-6-01 reads as rewritten:

"**§ 57C-6-01. Dissolution.**

A limited liability company is dissolved and its affairs shall be wound up at or upon the first to occur of the following:

(1) The time specified in the articles of organization or a written operating agreement;

(2) The happening of an event specified in the articles of organization or a written operating agreement;

(3) The written consent of all ~~members;~~ members or, if the limited liability company never had any members, a majority of the organizers;

(4) ~~Unless otherwise provided in the articles of organization or a written operating agreement, at such time that the limited liability company no longer has any members. The foregoing to the contrary notwithstanding, unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company shall not be dissolved and is not required to be wound up by reason of any event of withdrawal of the last remaining member if, within 90 days after the event of withdrawal, the assignee or the fiduciary of the estate of the last remaining member agrees in writing that the business of the limited liability company may be continued until the admission of the assignee or the fiduciary of the estate of the member or its designee to the limited liability company as a member, effective as of the occurrence of the event that causes the withdrawal of the last remaining member;~~ The 90th day after the day on which a limited liability company that once had one or more members ceases to have any members, unless within that 90-day period, one or more persons are designated or otherwise admitted, with their consent, as members either as provided by the articles of organization or a written operating agreement or, if the articles of organization or written operating agreement do not so provide, are designated or otherwise admitted as members by the assignee (or other person having only the rights of an assignee under G.S. 57C-5-02 who controls the interest) of the person who was the last member of the limited liability company; or

(5) Entry of a decree of judicial dissolution under G.S. 57C-6-02, or the filing by the Secretary of State of a certificate of dissolution under G.S. 57C-6-03."

SECTION 7. G.S. 57C-6-06.1 is repealed.

SECTION 8. G.S. 57C-10-03 reads as rewritten:

"**§ 57C-10-03. Rules of ~~construction.~~ construction; policy.**

(a) The rules that statutes in derogation of the common law are to be strictly construed shall have no application to this Chapter.

(b) The law of estoppel shall apply to this Chapter.

(c) The law of agency shall apply under this Chapter.

(d) This Chapter shall not be construed so as to impair the obligations of any contract existing when this Chapter goes into effect, nor to affect any action or proceedings begun or right accrued before this Chapter takes effect.

(e) It is the policy of this Chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements."

SECTION 9. This act becomes effective January 1, 2010.

SENATE BILL 412:
Modify NC Limited Liability Company Act

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 23, 2009
Introduced by:	Sen. Brunstetter	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to First Edition S412-CSST-8		Committee Counsel

SUMMARY: The pcs for Senate Bill 412 would make technical and clarifying changes to the North Carolina Limited Liability Company Act.

CURRENT LAW & BILL ANALYSIS:

Section 1. Certain documents, such as articles of organization and annual reports, relating to limited liability companies are required to be filed with the Secretary of State's office. Currently, statute only authorizes the manager to file those documents. Section 1 of the pcs would also authorize directors, persons vested with the authority to direct the management of the LLC, and executives, persons vested with the authority to participate in the management under the direction of the managers or directors, to file documents.

Section 2. Persons may be admitted as members to an LLC as provided in G.S. 57C-3-01. Section 2 of the pcs would provide two additional ways persons may be admitted as members:

- Persons designated or appointed upon the cessation of the LLC to have members.
- Persons admitted in connection with a conversion or merger of a business entity into an LLC.

Section 3. Chapter 57C contains a specific definition of distribution, which is a "direct or indirect transfer of money or other property or incurrence of indebtedness by a LLC to or for the benefit of its members in respect of their membership interests." G.S. 57C-1-03(6). That is the definition applied to the section restricting distributions from LLC's, G.S. 57C-4-06. Section 3 of the pcs would clarify that for the purpose of determining when a distribution is restricted, those amounts paid as reasonable compensation are not included in the calculation.

Section 4. Non-members of an LLC may acquire or retain rights to a membership, which may be by assignment of right or some other method. Section 4 of the pcs acknowledges that, and clarifies the methods by which that person may be admitted as a member of the LLC.

Sections 5, 6, and 7. *Section 5* of the pcs deletes the language regarding a personal representative or guardian of a member having the authority to exercise all of the member's rights for the purpose of settling the estate or administering the member's property. *Section 6* of the pcs deals with dissolution of the LLC when the LLC no longer has any members, allowing for the assignee of the last member to become a member, thereby having the authority to manage the LLC. *Section 7* repeals a statute that is no longer necessary due to the changes made in Section 6 of the pcs.

Section 8. Section 8 of the pcs adds language to clarify the intent of the General Assembly to give "maximum effect to the principle of freedom of contract and to the enforceability of operating agreements."

FFECTIVE DATE: Effective January 1, 2010.

BACKGROUND: Senate Bill 412 comes to the General Assembly as a recommendation of the North

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 484*

Short Title:	Auditor Ex Officio Duties.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE STATE AUDITOR FROM CERTAIN EX OFFICIO DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 147-33.93 reads as rewritten:

"**§ 147-33.93. Fees; dispute resolution panel.**

In addition to the powers granted pursuant to Article 6B of this Chapter or by any other provision of law, the Office of Information Technology Services may go before a panel consisting of the State ~~Auditor,~~ Treasurer, the State Controller, and the State Budget Officer, or their designees, to resolve disputes concerning services, fees, and charges incurred by State government agencies receiving information technology services from the Office. The State ~~Auditor~~ Treasurer shall adopt rules for the dispute resolution ~~process pursuant to G.S. 147-64.9.~~ process. The decisions of the panel shall be final in the settlement of all fee disputes that come before it."

SECTION 2. G.S. 147-64.6(c)(17) reads as rewritten:

"(c) The Auditor shall be responsible for the following acts and activities:

...

~~(17) The Auditor or the Auditor's designee, in conjunction with the State Controller and the State Budget Officer or their designees, shall handle the resolution of fee disputes between the Office of Information Technology Services and the State agencies receiving information technology services from the Office.~~

...."

SECTION 3. Article 6 of Chapter 147 of the General Statutes is amended by adding a new section to read:

"**§ 147-86.2. Information Technology Services fees; dispute resolution panel.**

The State Treasurer or the State Treasurer's designee, in conjunction with the State Controller and the State Budget Officer or their designees, shall handle the resolution of fee disputes between the Office of Information Technology Services and the State agencies receiving information technology services from the Office."

SECTION 4. G.S. 116-220(c) reads as rewritten:

"(c) The Board is authorized to create a Liability Insurance Trust Fund Council composed of not more than 13 members; one member each shall be appointed by the State Attorney General, ~~the State Auditor,~~ the State Insurance Commissioner, the Director of the Office of State Budget and Management, and the State Treasurer; the remaining members shall be appointed by the Board. Subject to all requirements and limitations of this Article and to any rules and regulations adopted by the Board under the terms of subsection (b) of this section, the Board may delegate to the Liability Insurance Trust Fund Council responsibility and authority

for the administration of the self-insured liability insurance program and of the insurance trust accounts established pursuant to such program."

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

SENATE BILL 484:
Auditor Ex Officio Duties

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 27, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Giles S. Perry
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 484 removes the State Auditor from an information technology services dispute panel, and the Liability Insurance Trust Fund Council.

[As introduced, this bill was identical to H467, as introduced by Rep. Tucker, which is currently in House State Government/State Personnel, if favorable, Science and Technology.]

CURRENT LAW: Under current law: the State Auditor is a member of, or designates an appointee to, the following two groups addressed by this bill:

- An ***information technology services dispute panel***, charged with resolving disputes concerning services, fees, and charges incurred by State government agencies receiving information technology services from the Office of Information Technology Services of the Office of the Governor.
- The ***Liability Insurance Trust Fund Council,*** a 13 member group created by the Board of Governors of the University of North Carolina, that has responsibility for the administration of the University self-insured liability insurance program for health-care practitioners, and related insurance trust accounts, established pursuant to Article 26 of Chapter 116 of the General Statutes.

BILL ANALYSIS: Senate Bill 484:

- removes the State Auditor from the ***information technology services dispute panel***, described above.
- provides that the State Treasurer, or her designee, in conjunction with the State Controller and the State Budget Officer, shall handle the resolution of fee disputes between the Office of Information Technology Services and the State agencies receiving information services from that office.
- removes the State Auditor from the ***Liability Insurance Trust Fund Council***, described above.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 513

Short Title:	Notice of Hearing/Unsupervised Probation.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

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 address shown on the records of the court."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 513
PROPOSED COMMITTEE SUBSTITUTE S513-CSSA-9 [v.3]

3/30/2009 2:49:07 PM

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 address shown on the records of the Division of Community Corrections in the Department of Correction, the address shown on the records of the court, or any other address known to the court 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:	Senate Judiciary I	**Date:**	March 31, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S513-CSSA-9		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 513 authorizes service by mail of notices of hearings on violations of unsupervised probation.***

BILL ANALYSIS: The PCS for 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 address shown on the records of the Division of Community Corrections, the address shown on the records of the court, or any other address known to the court and reasonably believed to provide actual notice to the offender.

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

Research Division *O. Walker Reagan, Director* *(919) 733-2578*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 633

Short Title:	Stipulation for Final Decision by OAH.	(Public)
Sponsors:	Senators Nesbitt; Berger of Franklin, Clodfelter, Kinnaird, McKissick, and Snow.	
Referred to:	Judiciary I.	

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN ADMINISTRATIVE LAW JUDGE TO MAKE THE FINAL DECISION IN A CONTESTED CASE WHEN THE DISPOSITION OF THE CASE HAS BEEN AGREED UPON BY THE PARTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 150B-36(c) reads as rewritten:

"(c) The following decisions made by administrative law judges in contested cases are final decisions appealable directly to superior court under Article 4 of this Chapter:

(1) A determination that the Office of Administrative Hearings lacks jurisdiction.

(2) An order entered pursuant to the authority in G.S. 7A-759(e).

(3) An order entered pursuant to a written prehearing motion that either dismisses the contested case for failure of the petitioner to prosecute or grants the relief requested when a party does not comply with procedural requirements.

(4) An order entered pursuant to a prehearing motion to dismiss the contested case in accordance with G.S. 1A-1, Rule 12(b) when the order disposes of all issues in the contested case.

(5) An order entered pursuant to the authority in G.S. 150B-31(b) when the stipulation or waiver confers final decision authority on the administrative law judge."

SECTION 2. This act is effective when it becomes law and applies to contested cases commenced on or after that date.

SENATE BILL 633:
Stipulation for Final Decision by OAH

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	March 23, 2009
Introduced by:	Sen. Nesbitt	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 633 would treat an order disposing of a contested case by stipulation as a final decision.

CURRENT LAW: A contested case is an administrative proceeding under Chapter 150B to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. G.S. 150B-2(2). That case is heard by an administrative law judge, who makes a decision, including facts and conclusions of law, in the contested case. The decision is, in turn, returned to the agency for a final decision. Once the agency makes a final decision, that final decision may be appealed to the superior court.

G.S. 150B-31(b) permits the parties to stipulate to a disposition, settlement, or consent order. There is no statutory authority for that stipulation to be treated as a final decision by the agency, which would allow appeal directly to the superior court.

Currently, there are certain decisions of the administrative law judge that are directly appealed to the superior court, without being returned to the agency for final decision:

- A determination that the Office of Administrative Hearings lacks jurisdiction.
- An order entered pursuant to the authority in G.S. 7A-759(e) – an order following a hearing on the merits of a deferred charge.
- An order entered pursuant to a written prehearing motion that either dismisses the contested case for failure of the petitioner to prosecute or grants the relief requested when a party does not comply with procedural requirements.
- An order entered pursuant to a prehearing motion to dismiss the contested case in accordance with G.S. 1A-1, Rule 12(b) when the order disposes of all issues in the contested case.

BILL ANALYSIS: Senate Bill 633 would state that an order entered by an administrative law judge of disposition stipulated to by the parties would allow appeal directly to the superior court without being returned to the agency for final decision.

EFFECTIVE DATE: Effective when it becomes law, and applies to contested cases commenced on or after that date.

S633-SMST-10(e1) v2

SENATE JUDICIARY I COMMITTEE
(Civil)

April 14, 2009
10:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Tuesday, April 14, 2009, in Room 1027 of the Legislative Building. Senators Present were Committee Chairman Martin Nesbitt, Vice-Chairmen Dan Clodfelter, Pete Brunstetter, and Josh Stein; members Charlie Albertson, Phil Berger, Andrew Brock, Harry Brown, Malcolm Graham, David Hoyle, Clark Jenkins, Ellie Kinnaird, Vernon Malone, Floyd McKissick, Tony Rand, David Rouzer, Richard Stevens, and Jerry Tillman; Staff Counsel Erika Churchill, Giles Perry, Susan Sitze and Bill Patterson; Committee Assistant Jan Lee.

Chairman Nesbitt called the meeting to order and introduced the pages serving the meeting; Kathryn Walker from Raleigh sponsored by Senator Hunt, Matthew Blaise from Raleigh, sponsored by Senator Hunt, James Butler from Raleigh, sponsored by Senator Hunt, Alli Davidson from Summerfield sponsored by Senator Phil Berger, Morgan Cunningham from Jacksonville sponsored by Senator Brown, Ally Winslow from Perquimans sponsored by Senator Basnight.

Chairman Nesbitt recognized Senator Stevens introducer of S.B. 870 - Make General Statutes Gender Neutral. Senator Stevens explained that S.B. 870 directs the Revisor of Statutes to make the General Statutes gender neutral. Senator Rand had concerns and after discussion Senator Brunstetter moved to amend the bill and it passed unanimously. Senator Stevens moved to give a new Proposed Committee Substitute for S.B. 870 a favorable report and unfavorable to the original report and it passed unanimously.

Senator Kinnaird was recognized to explain S.B. 602 – Medicaid False Claims/Qui Tam Actions and said Medicaid fraud is big business and there has been millions of dollars collected unlawfully. She said this bill will increase penalties for provider fraud. Establish a private civil action for provider false Medicaid claims. Grant the Attorney General the authority to issue subpoenas duces tecum related to Medicaid fraud by a provider, and make it unlawful to engage in certain activities relating the Medicaid program. Staff Counsel Erika Churchill, Sharnese Ransom with DHHS, and Charles Hobgood with the G.A.'s office assisted in explaining the bill. Also Attorney General Roy Cooper was recognized. After much discussion and questions Chairman Nesbitt said S.B. 602 will be put off until a later time.

The meeting was adjourned at 11:00 a.m.

Copies of S.B. 870, PCS for S.B. 870, Bill Analysis for S.B. 870, S.B. 602, Bill Analysis for S.B. 602 are attached to these minutes as attachments I, II, III, IV, V, respectively.

Respectfully submitted,

Senator Martin L. Nesbitt
Chairman

Janette W. Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 870

Short Title:	Make General Statutes Gender Neutral.	(Public)
Sponsors:	Senator Stevens.	
Referred to:	Judiciary I.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE REVISOR OF STATUTES TO MAKE THE GENERAL STATUTES GENDER NEUTRAL AND TO RECOMMEND OTHER STATUTORY AND CONSTITUTIONAL CHANGES TO THAT END.

The General Assembly of North Carolina enacts:

SECTION 1. The Revisor of Statutes is directed to make all changes to the General Statutes that do not change the law necessary to ensure that references to individuals are gender neutral where applicable. In implementing this section, the Revisor of Statutes is authorized to make outright substitutions consistent with examples in the North Carolina General Assembly Drafting Manual.

SECTION 2. The General Statutes Commission shall recommend to the 2010 Session of the 2009 General Assembly and the 2011 Session of the 2011 General Assembly any changes needed to make the General Statutes and the Constitution gender neutral that the Revisor of Statutes determines under Section 1 of this act cannot be made without an act of the General Assembly.

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

SENATE BILL 870:
Make General Statutes Gender Neutral

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 1, 2009
Introduced by:	Sen. Stevens	**Prepared by:**	Giles S. Perry
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 870 directs the Revisor of Statutes to make the General Statutes gender neutral.***

CURRENT LAW: The Revisor of Statutes is an employee of the Division of Legislative Drafting and Codification of Statutes of the Attorney General's Office. The Revisor of Statutes is statutorily charged with the duty of keeping the laws as clear and concise as possible by means of continuous statutory research and correction. (G.S. 114-9(3), G.S. 114-9.1.) The Revisor of Statutes is also the ex officio secretary of the General Statutes Commission, which is charged with studying any matter involved in the preparations of a modern codes of law, and advising the General Assembly on any changes it deemsadvisable. (Article 2 of Chapter 164 of the General Statutes).

The North Carolina General Assembly Drafting Manual addresses the issue of gender neutral drafting by directing staff to avoid gender specific nouns and pronouns, if possible, and if appropriate to the context of the bill and any current law it affects. The relevant section from the North Carolina General Assembly Drafting Manual on gender related drafting is attached.

BILL ANALYSIS: Senate Bill 870:

- directs the Revisor of Statutes to make all changes to the General Statutes that do not change the law necessary to ensure that references to individuals are gender neutral where applicable. In implementing this section, the Revisor of Statutes is authorized to make outright substitutions consistent with examples in the North Carolina General Assembly Drafting Manual.
- directs the General Statutes Commission to recommend to the 2010 Session of the 2009 General Assembly and the 2011 Session of the 2011 General Assembly any changes needed to make the General Statutes and the Constitution gender neutral that the Revisor of Statutes determines cannot be made without an act of the General Assembly.

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

BACKGROUND: Attached is the section of the North Carolina General Assembly Drafting Manual on gender-specific language.

From the North Carolina General Assembly Drafting Manual

Chapter -- Stylistic Rules of Statutory Drafting

Page 11-14

Number, Gender, Sensitivity

Chapter 12 of the General Statutes states that the singular legally includes the plural, and the singular should be used except when the context requires otherwise. The plural alone also legally includes the singular. Expressions such as "person or persons" are never justified.

Chapter 12 also states that the singular masculine pronoun "he" includes the feminine, unless the context clearly requires otherwise. However, a good drafter is sensitive to the legitimate demand for gender-neutrality in all expressions of law, whenever possible and appropriate. Some legislators insist that only gender-neutral language be used in their bills, or even that gender-specific language be removed from those parts of current law that are set out in their bills. In furthering these goals, the drafter must never use the constructions "he/she", "his/hers", and "s/he", or use the pronoun "they" or the adjective "theirs" with a singular referent. Two devices that are permissible but best kept to a minimum are the passive voice and the constructions "he or she", "him or her", and "his or her". The passive voice may be used if agency is clear.

The drafter should avoid nouns that are gender-specific in favor of substitutes that are generally accepted by recognized authorities on correct English usage. For example, "chair" should be substituted for "chairman". A list of gender specific nouns and possible substitutes is found at the end of this chapter.

The most difficult aspect of drafting measures in gender-neutral language is avoiding gender-specific pronouns. A number of alternatives are available. The drafter should evaluate each one, keeping in mind that not every one is appropriate in every circumstance and that the goals in drafting any measure are to assure clarity and avoid ambiguity:

1. Repeating the subject of the sentence or the word that would have been the pronoun's antecedent reference:

   A person is eligible for consideration if ~~he~~ the person submits an application.

2. Substituting a noun for the pronoun:

   If ~~he~~ the person submits an application, it shall be considered.

3. Omitting the pronoun or the phrase that would include the pronoun, if the pronoun or phrase is not essential:

   The director holds ~~his~~ office until a successor is appointed.

   The employee retains that status held ~~by him~~ on the date of ~~his~~ resignation.

4. Using an article such as "a", "an", "the", or "that" instead of the pronoun:

   The person shall submit ~~his~~ an application.

5. Restructuring or rewriting the sentence to avoid the need for a pronoun:

(a) Using a relative clause:

~~If an~~ An applicant who has been licensed in another state ~~he~~ shall submit a verified application.

(b) Combining sentences or clauses:

Each person listed ~~shall be eligible. He~~ is eligible and ~~shall also be~~ is entitled to all ancillary benefits.

(c) Using a modifier without an expressed subject (while being careful not to dangle the modifier):

~~If the commissioner finds~~ Upon finding that the sampling frequency can be safely reduced, ~~he~~ the commissioner may order it reduced as specified in subdivision (2).

(d) Removing the nominal:

A person who imports or ~~has in his possession~~ possesses dangerous drugs commits a class H felony.

(e) Using a plural:

~~A member~~ Members shall submit ~~his~~ their expense ~~voucher.~~ vouchers.

(f) Changing the entire structure of the sentence:

~~The Commission consists of the following members:~~
~~(1) The Secretary of Revenue or his designee . . .~~
The Commission consists both of members serving ex officio and of appointed members. Ex officio members may designate others to represent them on the commission. The membership is as follows:
(1) The Secretary of Revenue . . .

A drafter should not change gender-specific language that is meant to apply to only one sex, or change in only part of a law terminology that is used throughout the entire law.

Gender-Specific Nouns and Possible Substitutes

Brother, sister	Sibling
Businessman	Business person, executive, member of the business community, business manager
Crewman	Crew member
Daughter, son	Child
Draftsman	Drafter
Enlisted man	Enlisted person, enlisted

	member, enlistee
Father, mother	Parent
Female, male	Person, individual
Fireman	Firefighter
Foreman	Supervisor
Husband and wife	Married couple
Mailman	Mail carrier
Man	Person, individual
Manhours	Hours worked, worker hours
Manmade	Artificial, synthetic, manufactured
Manpower	Personnel, workforce, worker, human resources, staff
Midshipman	Cadet
Per man	Per person
Policeman	Police officer
Seaman	Sailor, crewmember
Serviceman	Service member
Six-man commission	Six-member commission
Widow, widower	Surviving spouse
Wife, husband	Spouse
Workman	Worker

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 602

Short Title:	Medicaid False Claims/Qui Tam Actions.	(Public)
Sponsors:	Senators Kinnaird, Rand, McKissick; Berger of Franklin, Clodfelter, Dannelly, Davis, Dorsett, Jones, Nesbitt, Stein, Vaughan, and Weinstein.	
Referred to:	Judiciary I.	

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE PROSECUTION OF MEDICAID FRAUD BY INCREASING CRIMINAL PENALTIES FOR PROVIDER FRAUD, CREATING CRIMINAL PENALTIES FOR OBSTRUCTION AND MAKING FALSE ENTRIES, ESTABLISHING A PRIVATE CIVIL ACTION FOR PROVIDER FALSE CLAIMS, AUTHORIZING A SUBPOENA FOR DOCUMENTS IN CASES OF PROVIDER FRAUD AND ABUSE, AND TO APPROPRIATE FUNDS TO THE DEPARTMENT OF JUSTICE TO IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 108A-70.11(5) reads as rewritten:

"(5) "Medical Assistance Program" means the Medical Assistance Program established pursuant to G.S. 108A-54 and includes the North Carolina Division of Medical Assistance ~~and~~ or its fiscal agent or contractors."

SECTION 1.(b) G.S. 108A-70.12(a) reads as rewritten:

"**§ 108A-70.12. Liability for certain acts; damages; effect of repayment.**

(a) Liability for Certain Acts. – It shall be unlawful for any provider of medical assistance under the Medical Assistance Program to:

(1) Knowingly present, or cause to be presented to the Medical Assistance Program a false or fraudulent claim for payment or approval; ~~or~~

(2) Knowingly make, use, or cause to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Medical Assistance ~~Program.~~Program;

(3) Conspire to defraud the Medical Assistance Program by getting a false or fraudulent claim allowed or paid; or

(4) Knowingly make, use, or cause to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Medical Assistance Program.

Each claim presented or caused to be presented in violation of this section is a separate violation."

SECTION 1.(c) G.S. 108A-70.12(b)(1) reads as rewritten:

"(b) Damages. –

(1) Except as provided in subdivision (2) of this subsection, a court shall assess against any provider of medical assistance under the Medical Assistance Program who violates this section a civil penalty of not less than five thousand five hundred dollars ~~($5,000)~~($5,500) and not more than ~~ten~~

~~thousand dollars ($10,000)~~eleven thousand dollars ($11,000) plus three times the amount of damages which the ~~Medicaid~~ Medical Assistance Program sustained because of the act of the provider.

...."

SECTION 2. Article 2 of Chapter 108A of the General Statutes is amended by adding the following new Part to read:

"Part 7A. Civil Action by Private Persons for Provider False Claims.

"**§ 108A-70.17. Civil action filed by private persons.**

(a) A person may bring a civil action for a violation of G.S. 108A-70.12 for the person and for the State. The action shall be brought in the name of the State. The action may be voluntarily dismissed by the person bringing the action only if the court and the Attorney General have given written consent to the dismissal.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General. The complaint shall be filed in camera, shall remain under seal for at least 120 days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within 120 days after it receives both the complaint and the material evidence and information.

(c) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal or a partial lifting of the seal. Any of these motions may be supported by affidavits or other submission in camera. The defendant shall not be required to respond to any complaint filed under this section until the complaint is unsealed and served upon the defendant pursuant to the North Carolina Rules of Civil Procedure.

(d) Before the expiration of the 120-day period or any extensions obtained under subsection (c) of this section, the State shall (i) proceed with the action, in which case the action shall be conducted by the State; or (ii) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(e) When a person brings an action under this section, no person other than the State may intervene or bring a related action based on the facts underlying the pending action.

"**§ 108A-70.17A. Rights of the parties to qui tam actions.**

(a) If the State proceeds with the action, it shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the person bringing the action. The person bringing the action shall have the right to continue as a party to the action, subject to the limitations of this section.

(b) The State may dismiss the action, notwithstanding the objections of the person initiating the action, if the person has been notified by the State of the filing of the motion, and the court has provided the person with an opportunity for a hearing on the motion.

(c) The State may settle the action with the defendant, notwithstanding the objections of the person initiating the action, if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(d) Upon a showing by the State that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the State's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as (i) limiting the number of witnesses the person may call; (ii) limiting the length of the testimony of such witnesses; (iii) limiting the person's cross-examination of witnesses; and (iv) otherwise limiting the participation by the person in the litigation.

(e) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would

cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(f) If the State elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the State so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the State's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the State to intervene at a later date upon a showing of good cause.

(g) Whether or not the State proceeds with the action, upon a showing by the State that certain actions of discovery by the person initiating the action would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than 60 days. The showing by the State shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the State has pursued the criminal or civil investigation or proceedings with reasonable diligence, and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(h) Notwithstanding G.S. 108A-70.17, the State may elect to pursue its claim through any alternate remedy available to the State, including any administrative proceeding to determine a civil money penalty. If an alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in the alternate proceeding as the person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the alternate proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to a court of competent jurisdiction of the State, if the time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

"**§ 108A-70.17B. Award to qui tam plaintiff.**

(a) Except as otherwise provided in this section, if the State proceeds with an action brought by a person under G.S. 108A-70.17, the person shall, subject to the second sentence of this subsection, receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information proved by the person bringing the action, relating to allegations or transactions in a federal or state criminal, civil, or administrative hearing, in a congressional, legislative, administrative, General Accounting Office, or State Auditor's report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds of the action, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this subsection shall be made from the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(b) If the State does not proceed with an action, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(c) Whether or not the State proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of G.S. 108A-70.12 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under subsection (a) or (b) of this section, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of G.S. 108A-70.12, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the State to continue the action.

(d) If the State does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and if the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

"**§ 108A-70.17C. Certain actions barred.**

(a) No court shall have jurisdiction over an action brought by a present or former employee of the State based on information discovered during the course of the present or former employee's employment unless that employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels, and unless the State failed to act on the information provided within a reasonable period of time.

(b) In no event may a person bring an action under G.S. 108A-70.17 that is based upon allegations or transactions that are the subject of a civil suit or an administrative proceeding in which the State is already a party.

(c) No court shall have jurisdiction over an action under G.S. 108A-70.17 based upon the public disclosure of allegations or transactions in a federal or state criminal, civil, or administrative hearing, in a congressional, legislative, administrative, General Accounting Office or State Auditor's report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General, or the person bringing the action is an original source of the information. For purposes of this section, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under G.S. 108A-70.17 that is based on the information.

(d) The State is not liable for expenses a person incurs in bringing an action under G.S. 108A-70.17.

(e) G.S. 108A-70.14 and G.S. 108A-70.15 apply to this Part."

SECTION 3. G.S. 108A-70.15 reads as rewritten:

"**§ 108A-70.15. Employee remedies.**

(a) In the absence of fraud or malice, no person who furnishes information to officials of the State responsible for investigating false claims violations shall be liable for damages in a civil action for any oral or written statement made or any other action that is necessary to supply information required pursuant to this ~~Part.~~Part or Part 7A of this Article.

(b) Any employee of a provider who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the employee's employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under G.S. ~~108A-70.12,~~ 108A-70.12 or Part 7A of this Article, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under G.S. ~~108A-70.12,~~ 108A-70.12 or Part 7A of this Article, shall be entitled to all relief necessary to make the employee whole. Relief shall include reinstatement with the same seniority status as the employee would have had but for the

discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate court for the relief provided in this section."

SECTION 4. Part 6 of Article 2 of Chapter 108A of the General Statutes is amended by adding the following new section to read:

"**§ 108A-63.1. Health care fraud and abuse subpoena duces tecum.**

(a) The Attorney General may issue in writing and cause to be served a subpoena duces tecum upon any corporation or governmental entity requiring the production of any records, books, papers, documents, electronic media, or other objects or tangible things, which may be relevant to any criminal investigation of any act or activity of a provider involving a violation of G.S. 108A-63, 14-100, 108A-60, 14-90, 14-112.2, 14-32.1, or 14-32.2 that a corporation or governmental entity may possess or have care, custody, or control.

(b) Requiring a custodian of records to give testimony concerning the production and authentication of the records.

(c) A subpoena under this section shall describe the objects required to be produced and prescribe a return date within a reasonable period of time within which the objects can be assembled and made available.

(d) The corporation or governmental entity may be required to produce the objects in the county in which the corporation or governmental entity has its principle office or in Wake County.

(e) A custodian of records summoned under this section shall be paid the same fees and mileage that are paid witnesses in the courts of the State.

(f) A corporation or governmental entity may move to quash or modify the subpoena if it is oppressive or unreasonable. The motion must be made before the time specified in the subpoena for production and may be made before a judge of the superior court in the county in which the corporation or governmental entity is required to produce the objects or in which it has its principle office.

(g) In the case of failure by any corporation or governmental entity without adequate excuse to obey a subpoena, the Attorney General may invoke the aid of a judge of the superior court. The court may issue an order requiring the subpoenaed corporation or governmental entity to appear before the Attorney General to produce records, if so ordered, or to give testimony concerning the production and authentication of the records. Failure to obey the order of the court may be punished as contempt of court.

(h) Any corporation or governmental entity, including officers, agents, and employees, who comply in good faith with the subpoena and produce the materials sought, shall not be liable in any court of this State to any person for the production of the objects or for the nondisclosure of the production to any person.

(i) Health information about an individual that is disclosed under this section may not be used in, or disclosed to any person for use in, any administrative, civil, or criminal action or investigation directed against the individual who is the subject of the information unless the action or investigation arises out of and is directly related to receipt of health care or payment for health care or action involving a fraudulent claim related to health; or if authorized by an appropriate order of a court of competent jurisdiction, granted after application showing good cause therefor.

(1) In assessing good cause under this subsection, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services.

(2) Upon the granting of an order to disclose, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure."

SECTION 5. G.S. 108A-63 reads as rewritten:

"**§ 108A-63. Medical assistance provider fraud.**

(a) It shall be unlawful for any provider of medical assistance under this Part to knowingly and willfully make or cause to be made any false statement or representation of a material fact:

(1) In any application for payment under this Part, or for use in determining entitlement to such payment; or

(2) With respect to the conditions or operation of a provider or facility in order that such provider or facility may qualify or remain qualified to provide assistance under this Part.

(b) It shall be unlawful for any provider of medical assistance to knowingly and willfully conceal or fail to disclose any fact or event affecting:

(1) His initial or continued entitlement to payment under this Part; or

(2) The amount of payment to which such person is or may be entitled.

(c) ~~Any~~ Except as otherwise provided in subsections (e) and (g) of this section, any person who violates a provision of this section shall be guilty of a Class I felony.

(d) "Provider" shall include any person who provides goods or services under this Part and any other person acting as an employee, representative or agent of such person.

(e) It shall be unlawful for any provider of medical assistance under this Part to knowingly and willfully execute, or attempt to execute, a scheme or artifice to:

(1) Defraud the Medical Assistance Program; or

(2) Obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, the Medical Assistance Program,

in connection with the delivery of or payment for health care benefits, items, or services under this Part. If the value of the health care benefits, items, or services is one hundred thousand dollars ($100,000) or more, a violation of this subsection is a Class C felony. If the value of the health care benefits, items, or services is less than one hundred thousand dollars ($100,000), a violation of this subsection is a Class H felony.

(f) It shall be unlawful for any provider to knowingly and willfully obstruct, delay, or mislead or attempt to obstruct, delay, or mislead an investigation of a violation of this section by the Attorney General's Office.

(g) It shall be unlawful for any provider to knowingly and willfully make or cause to be made a false entry in, alter, destroy, or conceal a financial, medical, or other record related to the provision of a benefit, item, or service under this Part with the intent to defraud."

SECTION 6. There is appropriated from the General Fund to the Department of Justice the sum of $ for the 2009-2010 fiscal year and the sum of $ for the 2010-2011 fiscal year. These funds shall be used for additional investigative legal and support positions and for other purposes to carry out the provisions of this act.

SECTION 7. Sections 2 through 4 of this act become effective January 1, 2010, and a civil action under Sections 2 through 4 may be brought for activity prior to the effective date if the limitations period set in G.S. 108A-70.13 has not lapsed. The remainder of this act becomes effective July 1, 2009.

SENATE BILL 602:
Medicaid False Claims/Qui Tam Actions

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 13, 2009
Introduced by:	Sen. Kinnaird	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 602 would do all of the following:

1. *Increase penalties for provider fraud.*
2. *Establish a private civil action for provider false Medicaid claims.*
3. *Grant the Attorney General the authority to issue subpoenas duces tecum related to Medicaid fraud by a provider.*
4. *Make it unlawful to engage in certain activities relating the Medicaid program.*

BILL ANALYSIS:

Section 1(a). Amends the definition of "Medical Assistance Program" to make to add contractors of the State.
Effective July 1, 2009.

Section 1(b). Amends GS 108A-70.12 to make it unlawful for medical assistance providers under the Medical Assistance Program to:

1. Conspire to defraud the Medical Assistance Program by getting a false claim allowed or paid, or
2. Knowingly make or use a false record to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Medical Assistance Program.

G.S. 14-3 would apply, and the penalty for violation would be a Class 1 misdemeanor.
Effective July 1, 2009.

Section 1(c). Amends GS 108A-70.12(b)(1) to increase the floor and the ceiling for civil penalties from $5,000 to $5,500 and from $10,000 to $11,000, respectively.
Effective July 1, 2009.

Section 2. Enacts new Part 7A, Civil Action by Private Persons for Provider False Claims, of Article 2 of Chapter 108A to allow a person to bring a civil action for a violation of GS 108A-70.12 on behalf of the person and the State, in the name of the State. The State is notified, and is provided opportunity to intervene. If the State proceeds with the action, it has the primary responsibility for prosecuting the action and is not bound by the person bringing the action. The State may dismiss the action, upon notice to the person, and may settle the action after a hearing. The participation of the person initiating the action may be limited by the court in the litigation upon a showing by the State or defendant.

If the award is for the State, the person initiating the action shall receive at least 15% of the proceeds, but no more than 25%. If the State opted not to proceed with the action, and the award is for the State, the person initiating the action shall receive at least 25% of proceeds, but no more than 30% plus reasonable expenses. In either instance the person initiating the action is entitled to reasonable expenses incurred, plus attorneys' fees and costs, all of which are to be awarded against the defendant.

If the court finds that the action was brought by a person who planned and initiated the violation upon which the action is based, that person may share in the proceeds, in a reduced share as determined by court.

The following actions are barred:

1. An action brought based on information from a present or former State employee or employee of a political subdivision of the State unless the person has already

exhausted existing internal procedures or the State has failed to act on the information within a reasonable time.

2. Actions based upon allegations that are the subject of a civil suit or administrative proceed that the State is already party to.
3. Actions based upon public disclosure in a number of settings, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

Effective January 1, 2010.

Section 3. Makes conforming changes.

Effective January 1, 2010.

Section 4. Enacts a new statute granting authority to the Attorney General to issue subpoenas duces tecum upon any corporation or governmental entity relevant to a criminal investigation of a provider involving a violation of the following statutes:

1. G.S. 108A-63, Medical assistance provider fraud.
2. G.S. 14-100, Obtaining property by false pretenses.
3. G.S. 108A-60, Protection of patient property.
4. G.S. 14-90, Embezzlement of property received by virtue of office or employment.
5. G.S. 14-112.2, Exploitation of an elder adult or disabled adult.
6. G.S. 14-32.1, Assaults on handicapped persons; punishments.
7. G.S. 14-32.2, Patient abuse and neglect; punishments.

The corporation or governmental agency may move to quash the subpoena duces tecum. Any corporation or governmental agency, including the officers, agents and employees, who comply with the subpoena duces tecum are paid the same fees and mileage paid to witnesses of the State and, if complying in good faith, are not liable in any court of North Carolina for the production of documents or for the nondisclosure of the production.

Effective January 1, 2010.

Section 5. Amends G.S. 108A-63:

1. To make it unlawful for a medical assistance provider to execute, or attempt to execute, a scheme or artifice to defraud the Medical Assistance Program or use false pretenses to obtain money or property owned by the Medical Assistance Program in connection with the delivery of or payment for health care benefits, items, or services. If the value of the items, benefits or services is $100,000 or more, a violation is a Class C felony; if it is valued at less than $100,000, a violation is a Class H felony.
2. To make it unlawful for any provider to knowingly and willfully obstruct, delay, or mislead an investigation of G.S. 108A-63 by the Attorney General.
3. To make it unlawful for any provider to knowingly and willfully make or cause to be made a false entry in, alter, destroy, or conceal a financial, medical, or other record related to the provision of a benefit, item or service under the Medical Assistance Program.

Effective July 1, 2009.

Section 6. Appropriates an unstated amount of money to the Department of Justice for additional investigative legal and support positions, and other purposes to carry out the act.

Effective July 1, 2009.

BACKGROUND: Provisions similar to this bill are in Section 10.29 of Senate Bill 1093, Appropriations Act of 2009.

S602-SMST-18(e1) v1

SENATE JUDICIARY I COMMITTEE
(Civil)

April 21, 2009
10:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Tuesday, April 21, 2009, in Room 1027 of the Legislative Building. A quorum being present Chairman Nesbitt called the meeting to order. Chairman Nesbitt expressed thoughts on the sudden death of one of the committee members Senator Vernon Malone that occurred over the weekend and ask the members to take a moment of silence in his memory.

Chairman Nesbitt welcomed the pages serving the meeting today.

Chairman Nesbitt appointed members to sub-committees for bills in the Committee that need to be studied further:

S.B. 602 –	Medicaid False Claims/Qui Tam Actions: Senators Kinnaird, Chairperson, Rand, Phil Berger, Tillman and Nesbitt.
S.B. 816 –	Office of Prosecution Services: Senators Brunstetter, Chairman, Rand Kinnaird, Clodfelter, Tillman.
S.B. 679 –	Uniform Apportionment Of Tort Responsibility: Senators Brunstetter, Chairman, Clodfelter, Stein, Stevens.
S.B.932 –	Guardianship/Incompetency,
S.B. 945 –	Guardianship Study,
S.B. 946	Guardianship Court – Appointed Counsel: Senators Stein, Chairman, Clary, Phil Berger, Kinnaird, Stevens and McKissick.

Senator Albertson was recognized to explain S. B. 167 – No Smoking/Cell Phones on Prison Grounds. Senator Albertson explained S.B. 167 is a Proposed Committee Substitute for S.B. 167 and moved for adoption for the PCS to be discussed. The motion was adopted and he explained the PCS for Senate Bill 167 prohibits smoking on the premises of correctional institutions and makes it a criminal offense to provide tobacco products or cell phones to inmates in the custody of the Department of Correction. Staff and a representative from the Department of Correction assisted Senator Albertson in explanation of the PCS for S.B. 167. After much discussion and questions it was decided to put the Proposed Committee Substitute for S.B. 167 off until further work and study has been done to the PCS.

Chairman Nesbitt recognized Senator McKissick to explain S.B. 586 – File Lis Certain Erosion Actions. Senator McKissick said this is a Committee Substitute and it would

Chairman Nesbitt recognized Senator McKissick to explain S.B. 586 – File Lis Certain Erosion Actions. Senator McKissick said this is a Committee Substitute and it would permit the filing of a notice of pending litigation for injunctive relief regarding certain sedimentation and control actions. Staff Counsel, and Attorney Kitchen from Durham assisted with the explanation and after a lengthy discussion and questions by the members the bill will be put off for further work and study.

The meeting was adjourned at 11:00 a.m.

Copies of S.B. 167, PCS for S.B. 167, Bill Analysis for PCS for 167, Support Statement from Thomas J. Turner for S.B. 167; S.B. 586, Bill Analysis for S.B. 586 are attached to these Minutes as Attachments I, II, III, IV, V, VI, and VII respectively.

Respectfully Submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W. Lee

Janette W. Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 167

Short Title:	No Smoking/Cell Phones on Prison Grounds.	(Public)
Sponsors:	Senators Albertson; Allran, Atwater, Bingham, Blake, Boseman, Clodfelter, Davis, Dorsett, Hartsell, Jenkins, Jones, Malone, Purcell, Rand, Rouzer, and Stevens.	
Referred to:	Judiciary I.	

February 16, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT SMOKING ON THE PREMISES OF CORRECTIONAL INSTITUTIONS AND TO MAKE IT A FELONY 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 prohibited in State correctional facilities.**

(a) The General Assembly finds that in order to protect the health, welfare, and comfort of inmates in the custody of the Department of Correction and to reduce the costs of inmate health care, it is necessary to prohibit inmates from using tobacco products ~~inside~~ 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.

(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. 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, or any person who knowingly gives or sells any tobacco product to a person who is not an inmate for delivery to an inmate, other than for authorized religious purposes, is guilty of a Class I felony.

(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 I felony."

SECTION 3. 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 4. This act becomes effective December 1, 2009, and applies to acts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S **D**

SENATE BILL 167
PROPOSED COMMITTEE SUBSTITUTE S167-CSLL-18 [v.3]

4/20/2009 6:20:11 PM

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 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 prohibited in State correctional facilities.**

(a) The General Assembly finds that in order to protect the health, welfare, and comfort of inmates in the custody of the Department of Correction and to reduce the costs of inmate health care, it is necessary to prohibit inmates from using tobacco products ~~inside~~ 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 may use and possess tobacco products for religious purposes consistent with the policies of the Department.

(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. 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, or any person who knowingly gives or sells any tobacco product to a person who is not an inmate for delivery to an inmate, 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 I felony."

SECTION 3. 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 4. 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:	Senate Judiciary I	**Date:**	April 20, 2009
Introduced by:	Sen. Albertson	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S167-CSLL-18		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 167 prohibits smoking on the premises of correctional institutions and makes it a criminal offense to provide tobacco products or cell phones to inmates in the custody of the Department of Correction.***

BILL ANALYSIS:

Section 1 amends G.S. 148-23.1 to prohibit the use of tobacco products on the premises of State correctional facilities. Current law only prohibits their use inside of the facilities. This section also adds additional language clarifying that inmates may use tobacco products for religious purposes consistent with the policies of the Department of Correction.

Section 2 amends G.S. 14-258.1 to create 2 new offenses.

- A Class 1 misdemeanor for anyone who knowingly gives or sells tobacco products to an inmate or to a person for delivery to an inmate.
- A Class I felony for anyone who 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.

EFFECTIVE DATE: This act becomes effective March 1, 2010, and applies to acts committed on or after that date.

In Support of SB167

My name is Thomas J. Turner. I was a professor of physics for many years, and served as Chairman of the Department of Physics, at Wake Forest University. Upon my retirement in 1993, I began teaching Discipleship courses at Craggy Correctional Center near Asheville. In 2001 the Mars Hill Baptist Church ordained me into the Christian ministry to enable me to serve as a volunteer chaplain at Craggy, thus providing much closer contact with inmates. Since that time *I have been extremely blessed by inmates whose lives have been radically changed. Unfortunately I have worked with some who would not respond. The challenges have been difficult, but the rewards overwhelming.*

My experiences and observations during these years give me a strong sense of the importance of approval of Senate Bill 167. Passage will help us to accomplish two critical objectives. The atmosphere (both physical and social) of the institution will improve greatly and friction among inmates will decrease. Secondly, it will significantly reduce health costs for the institution and the taxpayers of North Carolina. In one case I recently experienced, a large expenditure of thousands of dollars resulted from a heavy smoker who underwent tests for an entire day - because his heart stopped beating momentarily.

Your support of SB 167 will be greatly appreciated. It will make a difference for the state socially and financially. Indeed, I believe it will make the State of North Carolina a safer place in which to live and succeed. Thank you.

Dr. Thomas J. Turner
101 Forest Ridge Drive
Mars Hill, NC 28754
(828) 689-5413

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 586

Short Title:	File Lis Pendens for Certain Erosion Actions.	(Public)
Sponsors:	Senators McKissick; Apodaca, Atwater, Brunstetter, Foriest, Forrester, Graham, Hartsell, Jones, and Stevens.	
Referred to:	Judiciary I.	

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE FILING OF NOTICE OF PENDING LITIGATION FOR ACTIONS SEEKING INJUNCTIVE RELIEF REGARDING SEDIMENTATION AND EROSION CONTROL FOR ANY LAND-DISTURBING ACTIVITY THAT IS SUBJECT TO THE REQUIREMENTS OF ARTICLE 4 OF CHAPTER 113A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-116(a) reads as rewritten:

"(a) Any person desiring the benefit of constructive notice of pending litigation must file a separate, independent notice thereof, which notice shall be cross-indexed in accordance with G.S. 1-117, in all of the following cases:

(1) Actions affecting title to real ~~property;~~property.

(2) Actions to foreclose any mortgage or deed of trust or to enforce any lien on real ~~property; and~~property.

(3) Actions in which any order of attachment is issued and real property is attached.

(4) Actions seeking injunctive relief under G.S. 113A-64.1 or G.S. 113A-65 regarding sedimentation and erosion control for any land-disturbing activity that is subject to the requirements of Article 4 of Chapter 113A of the General Statutes."

SECTION 2. This act becomes effective October 1, 2009, and applies to actions filed on or after that date.

SENATE BILL 586:
File Lis Pendens for Certain Erosion Actions

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 20, 2009
Introduced by:	Sen. McKissick	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 586 would permit the filing of a notice of pending litigation for injunctive relief regarding certain sedimentation and erosion control actions.

[As introduced, this bill was identical to H789, as introduced by Reps. Hall, Luebke, Michaux, Wilkins, which is currently in House Environment and Natural Resources, if favorable, Judiciary I.]

CURRENT LAW: A notice of lis pendens is a notice filed for the purpose of warning all persons that the title to certain property is in litigation, and serves as notice that a purchaser is in danger of being bound by an adverse judgment.

Currently, under North Carolina law, a notice of lis pendens may be filed in the following actions:

- Actions affecting title to real property.
- Actions to foreclose any mortgage or deed of trust or to enforce any lien on real property.
- Actions in which any order of attachment is issued and real property is attached.

The notice of lis pendens is to contain the name of the court in which the action has been commenced or is pending; the names of the parties to the action; the nature and purpose of the action; and a description of the property to be affected thereby. The notice may be filed at or any time after the commencement of an action; at or any time after real property has been attached; or at or any time after the filing of an answer or other pleading in which the pleading party states an affirmative claim for relief falling within the actions in which a notice of lis pendens may be filed.

The notice of lis pendens is to be filed with the clerk of superior court of each county in which any part of the real property is located in order to be effective against bona fide purchasers or lien creditors with respect to that real property. Every notice filed is to be cross-indexed in a record called the "Record of Lis Pendens." The notice of lis pendens is constructive notice to a purchaser or incumbrancer of the affected property and each are bound by the proceedings taken after the cross-indexing to the same extent as if the purchaser or incumbrancer were a party to the proceedings.

The notice of lis pendens is effective only if the notice of summons is served, and may be cancelled by the court in which the action was filed.

BILL ANALYSIS: Senate Bill 586 would also permit the filing of a notice of lis pendens for an action seeking injunctive relief under G.S. 113A-64.1(Restoration of areas affected by failure to comply) or G.S. 113A-65 (Injunctive relief) regarding sedimentation and erosion control for any land disturbing activity subject to Article 4 of Chapter 113A. 'Land disturbing activity' is defined as "any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation" for purposes of Article 4 of Chapter 13A.

EFFECTIVE DATE: Effective October 1, 2009, and applies to actions filed on or after that date.

S586-SMST-20(e1) v2

SENATE JUDICIARY I COMMITTEE
(Civil)

April 28, 2009
10:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Tuesday, April 28, 2009, in Room 1027 of the Legislative Building. Senators present were; Committee Chairman Martin L. Nesbitt, Vice-Chairmen Dan Clodfelter, Pete Brunstetter, R. C. Soles, and Josh Stein; members Senators Charlie Albertson, Phil Berger, Andrew Brock, Harry Brown, Malcolm Graham, Clark Jenkins, Ellie Kinnaird, Floyd McKissick, David Rouzer, Richard Stevens, and Jerry Tillman, Staff Counsel Erika Churchill, Giles Perry, Susan Sitze, and Bill Patterson; Committee Assistant Jan Lee.

A quorum being present, Vice-Chairman Clodfelter called the meeting to order and recognized Chairman Nesbitt to explain S.B. 953 – Protect Tenants in Foreclosed Property. S.B. 953 being a Proposed Committee Substitute Chairman Nesbitt moved it be adopted for discussion and it was adopted. Senator Nesbitt said S.B. 953 simply provides that the new owner shall give 60 days notice to the tenant before the sheriff removes the tenant from the premises. It also requires that the tenant must pay rent during the 60 day period to the new owner. Staff Counsel Erika Churchill assisted with the explanation. There were many questions and discussion and Senator Graham made a motion to give S.B. 953 Proposed Committee Substitute a favorable report and unfavorable to the original bill. It passed unanimously.

Chairman Nesbitt recognized Senator Julia Boseman sponsor of S.B. 300 – Amend Speeding to Elude Arrest Statue. Senator Boseman and Staff Counsel Susan Sitze explained that S.B. 300 requires seizure of any vehicle used to feloniously flee or feloniously attempt to elude a law enforcement officer in the performance of the officer's official duties. After discussion and questions the committee felt more work needed to be done on the bill and Chairman Nesbitt appointed Senator Soles and Senator Brown to work with the staff on S.B. 300 and bring it back to the committee at a later meeting.

Chairman Nesbitt recognized Senator McKissick sponsor of S.B. 759 – Modify DWI Checking Station Requirements. Senator McKissick offered an amendment to the bill and explained it and moved for adoption of the amendment to the bill. The amendment was adopted and Senator McKissick said S.B. 759 requires law enforcement agencies to designate patterns in writing for stopping vehicles at checking stations and creates grounds for suppression and dismissal of impaired driving cases based on the operation of checking stations. The amendment being adopted S.B. 759 became a Proposed Committee Substitute. After discussion and questions Senator Stein made the motion to give the Proposed Committee Substitute a favorable report and unfavorable to the original bill. The motion was voted on unanimously.

The meeting was adjourned at 11:00 a.m.

Copies of S.B. 953, Bill Analysis for S.B. 953, PCS for S.B. 953, S.B. 300, Bill Analysis for S.B. 300, S.B. 759, Amendment for S.B. 759, Bill Analysis for S.B. 759, Bill Analysis for S.B. 759 are attached to these Minutes as attachments I, II, III, IV, V, VI, VII, and VIII, respectively.

Respectfully Submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W. Lee

Janette W. Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 953

Short Title:	Protect Tenants in Foreclosed Property.	(Public)
Sponsors:	Senator Nesbitt.	
Referred to:	Judiciary I.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE PURCHASER OF FORECLOSED PROPERTY SHALL NOT DISPOSSESS OR EVICT A TENANT WHO RECEIVES SECTION 8 ASSISTANCE PRIOR TO THE EXPIRATION OF THE TENANT'S LEASE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2A of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

"**§ 45-21.27A. Purchaser subject to Section 8 lease and contract.**

A sale or upset bid pursuant to this Article shall not terminate a rental agreement that was entered into between the mortgagor and a tenant who receives assistance pursuant to Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. § 1437f) prior to the commencement of the foreclosure action. No order of possession shall be issued pursuant to G.S. 45-21.29 and no summary ejectment action under Article 3 of Chapter 42 of the General Statutes shall commence prior to the expiration of the rental agreement on the grounds that the tenant no longer has the right or privilege to occupy the premises as a result of the sale or upset bid. A purchaser of residential property in which a tenant who receives assistance pursuant to Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. § 1437f) resides shall be subject to the housing assistance payments contract for the tenant's dwelling unit."

SECTION 2. G.S. 45-21.29(k) reads as rewritten:

"(k) Orders for possession of real property sold pursuant to this Article, in favor of the purchaser and against any party or parties in possession at the time of application therefor, may be issued by the clerk of the superior court of the county in which the property is sold if all of the following apply:

...

(5) Ten days' notice has been given to the party or parties who remain in possession at the time application is made, unless the party or parties receive assistance under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. § 1437f), and in that case, the provisions of G.S. 45-21.27A shall apply or, in the case of residential ~~property~~rental property, ~~containing 15 or more rental units, 30~~ 90 days' notice has been given to the party or parties who remain in possession at the time the application is made.

...."

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

SENATE BILL 953:
Protect Tenants in Foreclosed Property

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 27, 2009
Introduced by:	Sen. Nesbitt	**Prepared by:**	R. Erika Churchill Committee Counsel
Analysis of:	PCS to First Edition S953-CSST-14		

SUMMARY: Senate Bill 953 would increase the time period tenants of residential property sold under power of sale must be given notice prior to an order for possession.

[As introduced, this bill was identical to H1051, as introduced by Rep. Blue, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary II.]

CURRENT LAW: Once real property is sold under power of sale, an order of possession in favor of the purchaser and against any party or parties in possession if all of the following apply:

- The property has been sold in the exercise of the power of sale contained in any mortgage, deed of trust, leasehold mortgage, leasehold deed of trust, or a power of sale authorized by any other statutory provisions.
- The provisions of Article 2A of Chapter 45 of the General Statutes have been complied with.
- The sale has been consummated, and the purchase price has been paid.
- The purchaser has acquired title to and is entitled to possession of the real property sold.
- Ten days' notice has been given to the party or parties who remain in possession at the time application is made. In the case of residential property containing 15 or more rental units, 30 days' notice must have been given to the party or parties who remain in possession.
- Application is made by petition to the clerk by the mortgagee, the trustee, the purchaser of the property, or any authorized representative of the mortgagee, trustee, or purchaser of the property.

BILL ANALYSIS: The proposed committee substitute for Senate Bill 953 would do the following:

1. Extend the time period of notice given to parties remaining in possession of residential real property after a sale under power of sale to 60 days.
2. Clarify that the purchaser of residential real property may still use the summary ejectment process under Article 3 of Chapter 42, Landlord and Tenant if the party or parties in possession fail to pay the rent due during the 60 day notice period.

EFFECTIVE DATE: October 1, 2009

S953-SMST-23(CSST-14) v1

SUPPORT SB 953 (Protect Tenants in Foreclosed Property)
Sponsor: Sen. Nesbitt

Background:

Foreclosures have increased in NC at an alarming rate over the past few years. Foreclosures not only affect the owner of the home, but also the families who are renting when their landlord loses the home to foreclosure. There have been a growing number of renters who are being displaced by foreclosure sales, some with only 10 days notice that they must leave and find other housing. Families who rent are facing an incredibly hard time finding another place to move to under such short time frames.

SB 953:

SB 953 does not change the process for purchasers of foreclosed homes to remove a tenant of the previous owner. That process does not require court action. The new owner can have the tenant removed by the sheriff by basically providing notice to the tenant and showing proper ownership.

SB 953 simply provides that the new owner shall give 60 days notice to the tenant before the sheriff removes the tenant from the premises. SB 953 also requires that the tenant must pay rent during the 60 day period to the new owner.

Currently tenants in properties less than 15 units receive 10 days notice from the new owner, while tenants in properties with 15 or more units receive 30 days notice. SB 953 simplifies the notice requirement, while providing tenants a better opportunity to find and move their family to another home.

NC Bankers Association Support SB 953.

For more information: Contact Bill Rowe, NC Justice Center; 856-2177; bill@ncjustice.org

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 953
PROPOSED COMMITTEE SUBSTITUTE S953-CSST-14 [v.5]

4/27/2009 4:05:48 PM

Short Title: Protect Tenants in Foreclosed Property. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE TIME PERIOD TENANTS OF RESIDENTIAL PROPERTY SOLD UNDER POWER OF SALE MUST BE GIVEN NOTICE PRIOR TO AN ORDER FOR POSSESSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-21.29 reads as rewritten:

"**§ 45-21.29. Orders for possession.**

(a)-(j) Repealed by Session Laws 1993, c. 305, s. 18.

(k) Orders for possession of real property sold pursuant to this Article, in favor of the purchaser and against any party or parties in possession at the time of application therefor, may be issued by the clerk of the superior court of the county in which the property is sold if all of the following apply:

(1) The property has been sold in the exercise of the power of sale contained in any mortgage, deed of trust, leasehold mortgage, leasehold deed of trust, or a power of sale authorized by any other statutory provisions.

(2) Repealed by Session Laws 1993, c. 305, s. 18.

(2a) The provisions of this Article have been complied with.

(3) The sale has been consummated, and the purchase price has been paid.

(4) The purchaser has acquired title to and is entitled to possession of the real property sold.

(5) Ten days' notice has been given to the party or parties who remain in possession at the time application is made, or, in the case of residential property ~~containing 15 or more rental units, 30~~ 60 days' notice has been given to the party or parties who remain in possession at the time the application is made.

(6) Application is made by petition to the clerk by the mortgagee, the trustee, the purchaser of the property, or any authorized representative of the mortgagee, trustee, or purchaser of the property.

(l) An order for possession issued pursuant to G.S. 45-21.29(k) shall be directed to the sheriff and shall authorize the sheriff to remove all occupants and their personal property from the premises and to put the purchaser in possession, and shall be executed in accordance with the procedure for executing a writ or order for possession in a summary ejectment proceeding under G.S. 42-36.2. The purchaser shall have the same rights and remedies in connection with the execution of an order for possession and the disposition of personal property following

execution as are provided to a landlord under North Carolina law, including Chapters 42 and 44A of the General Statutes.

(m) When the real property sold is situated in more than one county, the provisions of subsection (l) of this section shall be complied with in each county in which any part of the property is situated.

(n) Notwithstanding subdivision (k)(5) of this section, after the date of the notice required by subdivision (k)(5) of this section, a purchaser may institute proceedings for ejection under Article 3 of Chapter 42 of the General Statutes for failure to pay rent that becomes due during the 60-day notice period at the rate required by the rental agreement in effect prior to the purchase of the residential property within five days of the date stated in that rental agreement. In determining the amount of rent due, rent paid to the previous owner shall be included and the rent subsidy by the United States Department of Housing and Urban Development, by the United States Department of Agriculture, by a State agency, by a public housing authority, or by a local government shall not be included."

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

Attachment IV

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 300

Short Title:	Amend Speeding to Elude Arrest Statute.	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Judiciary I.	

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE SEIZURE OF ANY VEHICLE USED TO FELONIOUSLY FLEE OR FELONIOUSLY ATTEMPT TO ELUDE A LAW ENFORCEMENT OFFICER IN THE PERFORMANCE OF THE OFFICER'S OFFICIAL DUTIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.5 is amended by adding a new subsection to read:

"**§ 20-141.5. Speeding to elude arrest.**

...

(b2) Any vehicle involved in a violation of subsection (a) of this section, if subsection (b) or (b1) is applicable to the offense, shall be declared contraband and subject to seizure and summary forfeiture to the State.

...."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

SENATE BILL 300:
Amend Speeding to Elude Arrest Statute

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 27, 2009
Introduced by:	Sen. Boseman	**Prepared by:**	Susan Sitze
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 300 requires seizure of any vehicle used to feloniously flee or feloniously attempt to elude a law enforcement officer in the performance of the officer's official duties.

BILL ANALYSIS: Senate Bill 300 amends G.S. 20-141.5 by adding a new subsection (b2) which states that any vehicle involved in a felony offense of speeding to elude arrest shall be declared contraband and subject to seizure and summary forfeiture to the State.

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

CURRENT LAW:

§ 20-141.5. Speeding to elude arrest.

(a) It shall be unlawful for any person to operate a motor vehicle on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer who is in the lawful performance of his duties. Except as provided in subsection (b) of this section, violation of this section shall be a Class 1 misdemeanor.

(b) If two or more of the following aggravating factors are present at the time the violation occurs, violation of this section shall be a Class H felony.

(1) Speeding in excess of 15 miles per hour over the legal speed limit.
(2) Gross impairment of the person's faculties while driving due to:
  a. Consumption of an impairing substance; or
  b. A blood alcohol concentration of 0.14 or more within a relevant time after the driving.
(3) Reckless driving as proscribed by G.S. 20-140.
(4) Negligent driving leading to an accident causing:
  a. Property damage in excess of one thousand dollars ($1,000); or
  b. Personal injury.
(5) Driving when the person's drivers license is revoked.
(6) Driving in excess of the posted speed limit, during the days and hours when the posted limit is in effect, on school property or in an area designated as a school zone pursuant to G.S. 20-141.1, or in a highway work zone as defined in G.S. 20-141(j2).
(7) Passing a stopped school bus as proscribed by G.S. 20-217.
(8) Driving with a child under 12 years of age in the vehicle.

(b1) When a violation of subsection (a) of this section is the proximate cause of the death of any person, the person violating subsection (a) of this section shall be guilty of a Class H felony. When a violation of subsection (b) of this section is the proximate cause of the death of any person, the person violating subsection (b) of this section shall be guilty of a Class E felony.

(c) Whenever evidence is presented in any court or administrative hearing of the fact tha a vehicle was operated in violation of this section, it shall be prima facie evidence that the vehicle was operated by the person in whose name the vehicle was registered at the time of the violation, according to the Division's records. If the vehicle is rented, then proof of that rental shall be prima facie evidence that the vehicle was operated by the renter of the vehicle at the time of the violation.

(d) The Division shall suspend, for up to one year, the drivers license of any person convicted of a misdemeanor under this section. The Division shall revoke, for two years, the drivers license of any person convicted of a felony under this section if the person was convicted on the basis of the presence of two of the aggravating factors listed in subsection (b) of this section. The Division shall revoke, for three years, the drivers license of any person convicted of a felony under this section if the person was convicted on the basis of the presence of three or more aggravating factors listed in subsection (b) of this section. In the case of a first felony conviction under this section where only two aggravating factors were present, the licensee may apply to the sentencing court for a limited driving privilege after a period of 12 months of revocation, provided the operator's license has not also been revoked or suspended under any other provision of law. A limited driving privilege issued under this subsection shall be valid for the period of revocation remaining in the same manner and under the terms and conditions prescribed in G.S. 20-16.1(b). If the person's license is revoked under any other statute, the limited driving privilege issued pursuant to this subsection is invalid.

(e) When the probable cause of the law enforcement officer is based on the prima facie evidence rule set forth in subsection (c) above, the officer shall make a reasonable effort to contact the registered owner of the vehicle prior to initiating criminal process.

(f) Each law enforcement agency shall adopt a policy applicable to the pursuit of fleeing or eluding motorists. Each policy adopted pursuant to this subsection shall specifically include factors to be considered by an officer in determining when it is advisable to break off a chase to stop and apprehend a suspect. The Attorney General shall develop a model policy or policies to be considered for use by law enforcement agencies. (1997-443, s. 19.26(a); 2005-341, s. 1.)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 759

Short Title:	Modify DWI Checking Station Requirements.	(Public)
Sponsors:	Senators McKissick; Atwater, Berger of Franklin, Davis, Foriest, Jones, Kinnaird, Nesbitt, Snow, and Vaughan.	
Referred to:	Judiciary I.	

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 AND CREATING GROUNDS FOR SUPPRESSION AND DISMISSAL OF IMPAIRED DRIVING CASES BASED ON THE OPERATION OF 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~~may 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.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT *Attachment VII*

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 4-28-09

S. B. No. 759 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) McKissick

Sen.)

1 moves to amend the bill on page 2, line 8

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting that line to read:

4 "Subsection shall not be grounds for a motion to suppress

5 or a defense to ~~any~~ an offense"

6

7

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE BILL 759:
Modify DWI Checking Station Requirements

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 27, 2009
Introduced by:	Sen. McKissick	**Prepared by:**	Susan Sitze
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 759 requires law enforcement agencies to designate patterns in writing for stopping vehicles at checking stations and creates grounds for suppression and dismissal of impaired driving cases based on the operation of 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.

The bill also amends subsection (d) to provide that the requirement that placement of checkpoints be random or statistically indicated, and that checkpoints should not be placed repeatedly in the same location or proximity, may be grounds for a motion to suppress or a defense to an offense arising out of the operation of a checking station. Current law provides that those requirements shall not be grounds for a motion to suppress or a defense.

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to checking stations conducted on or after that date.

SENATE JUDICIARY I COMMITTEE
(Civil)

April 30, 2009
10:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Thursday, April 30, 2009, in Room 1027 of the Legislative Building. A quorum being present Chairman Nesbitt called the meeting to order.

Chairman Nesbitt recognized Senator Hartsell sponsor of S.B. 882 – Statute of Repose/Products Liability to explain the bill. Senator Hartsell said that the North Carolina Statute of Repose is six years from date of purchase. S.B. 882 would clarify and reform the statutes of limitation and repose in product liability actions. Staff Counsel Erika Churchill assisted in explaining the bill. S.B. 882 is being presented as a Proposed Committee Substitute. Senator Rand made the motion to adopt the Proposed Committee Substitute for S.B. 882 and it was adopted for discussion. The following people spoke on the Proposed Committee Substitute for S.B. 882: Elaine Gorsky, John McAllister, Andrew Chamberlain and Burton Craig. After much discussion and questions by the members Senator Josh Stein moved for an unfavorable report for the original bill and a favorable report for the Proposed Committee Substitute for S.B. 882 and it passed unanimously.

The meeting adjourned at 11:00 a.m.

Copies of S.B. 882, Bill Analysis for S.B. 882, PCS for S.B. 882 are attached to these Minutes as Attachments I, II, III.

Respectfully Submitted,

Martin L. Nesbitt
Chairman

Janette W. Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 882

Short Title:	Statute of Repose/Products Liability.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary I.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND REFORM THE STATUTES OF LIMITATION AND REPOSE IN PRODUCT LIABILITY ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-50 reads as rewritten:

"**§ 1-50. Six years.**

(a) Within six years an action –

...

~~(6) No action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after the date of initial purchase for use or consumption.~~

...."

SECTION 2. G.S. 99B-2 reads as rewritten:

"**§ 99B-2. Seller's opportunity to inspect; privity requirements for warranty claims.**

...

(b) A claimant who is a ~~buyer,~~buyer or a lessee, as defined in the Uniform Commercial Code, of the product involved, or who is a member or a guest of a member of the family of the ~~buyer,~~buyer or lessee, a guest of the ~~buyer,~~buyer or lessee, or an employee of the ~~buyer~~ buyer or lessee may bring a product liability action directly against the manufacturer of the product involved for breach of implied warranty; and the lack of privity of contract shall not be grounds for the dismissal of such action."

SECTION 3. Chapter 99B of the General Statutes is amended by adding a new section to read:

"**§ 99B-7. Limitation of actions; statute of repose.**

(a) The purpose of this section is to define in a single statute the time limits for commencing product liability actions, to protect the citizens, manufacturers, and sellers of North Carolina, and to reaffirm that the statute of repose for product liability actions does not apply to diseases.

(b) All product liability actions, except those for wrongful death, shall be commenced within three years of the date on which the property damage or injury complained of occurs.

(c) All product liability actions for wrongful death under G.S. 28A-18-2 shall be commenced within two years of the date of death, so long as the decedent's claim would not have been barred on the date of death by the provisions of subsections (d) and (e) of this section.

(d) Except as provided in subsection (f) of this section, all product liability actions against manufacturers shall be commenced as follows:

(1) For products manufactured in North Carolina, within six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption.

(2) For products manufactured outside North Carolina, within the time allowed by the applicable statute of repose, if any, of the state or country where the product was manufactured, but in no event less than six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption. If the state or country where the product was manufactured does not have an applicable statute of repose, then the only limitations upon the commencement of a product liability action shall be as set forth in subsections (b) and (c) of this section.

(e) Except as provided in subsection (f) of this section, all product liability actions against sellers shall be commenced as follows:

(1) For products sold or leased by the defendant seller in North Carolina, within six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption.

(2) For products sold or leased by the defendant seller outside North Carolina, within the time allowed by the applicable statute of repose, if any, of the state or country where the seller sold or leased the product, but in no event less than six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption. If the state or country where the seller sold or leased the product does not have an applicable statute of repose, then the only limitations upon the commencement of a product liability action shall be as set forth in subsections (b) and (c) of this section.

(f) In all product liability actions in which a disease allegedly resulted from exposure to or use of the product, the date of injury under subsection (b) of this section shall be the date of diagnosis of the disease. Product liability actions involving claims for disease are not governed by the provisions of subsections (d) and (e) of this section.

(g) If the manufacturer or seller asserts that the statute of repose in subsection (d) or (e) of this section bars the product liability action, the manufacturer or seller shall have the burden of proving when the repose period began.

(h) The statutes of limitation and repose for product liability actions shall be subject to the tolling provisions of G.S. 1-17 and G.S. 1-22."

SECTION 4. This act becomes effective October 1, 2009, and applies to causes of action that accrue on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S **D**

SENATE BILL 882
PROPOSED COMMITTEE SUBSTITUTE S882-CSST-20 [v.1]

4/29/2009 7:57:26 PM

Short Title: Statute of Repose/Products Liability. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND REFORM THE STATUTES OF LIMITATION AND REPOSE IN PRODUCT LIABILITY ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-50 reads as rewritten:

"**§ 1-50. Six years.**

(a) Within six years an action –

...

~~(6) No action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after the date of initial purchase for use or consumption.~~

...."

SECTION 2. G.S. 99B-2 reads as rewritten:

"**§ 99B-2. Seller's opportunity to inspect; privity requirements for warranty claims.**

...

(b) A claimant who is a buyer, or a lessee as defined in ~~the Uniform Commercial Code,~~ G.S. 25-2A-103(1)(n), of the product involved, or who is a member or a guest of a member of the family of the ~~buyer,~~buyer or lessee, a guest of the ~~buyer,~~buyer or lessee, or an employee of the ~~buyer~~ buyer or lessee may bring a product liability action directly against the manufacturer of the product involved for breach of implied warranty; and the lack of privity of contract shall not be grounds for the dismissal of such action."

SECTION 3. Chapter 99B of the General Statutes is amended by adding a new section to read:

"**§ 99B-7. Limitation of actions; statute of repose.**

(a) The purpose of this section is to define in a single statute the time limits for commencing product liability actions, to protect the citizens, manufacturers, and sellers of North Carolina, and to reaffirm that the statute of repose for product liability actions does not apply to diseases.

(b) All product liability actions, except those for wrongful death, shall be commenced within three years of the date on which the property damage or injury complained of occurs.

(c) All product liability actions for wrongful death under G.S. 28A-18-2 shall be commenced within two years of the date of death, so long as the decedent's claim would not

have been barred on the date of death by the provisions of subsections (d) and (e) of this section.

(d) Except as provided in subsection (f) of this section, all product liability actions against manufacturers shall be commenced as follows:

(1) For products manufactured in North Carolina, within six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption.

(2) For products manufactured outside North Carolina, within the time allowed by the applicable statute of repose, if any, of the state or country where the product was manufactured, but in no event less than six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption. If the state or country where the product was manufactured does not have an applicable statute of repose, then the only limitations upon the commencement of a product liability action shall be as set forth in subsections (b) and (c) of this section.

(e) Except as provided in subsection (f) of this section, all product liability actions against sellers shall be commenced as follows:

(1) For products sold or leased by the defendant seller in North Carolina, within six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption.

(2) For products sold or leased by the defendant seller outside North Carolina, within the time allowed by the applicable statute of repose, if any, of the state or country where the seller sold or leased the product, but in no event less than six years after the date the product that allegedly caused the property damage, injury, or death was first sold or leased for use or consumption. If the state or country where the seller sold or leased the product does not have an applicable statute of repose, then the only limitations upon the commencement of a product liability action shall be as set forth in subsections (b) and (c) of this section.

(f) In all product liability actions in which a disease allegedly resulted from exposure to or use of the product, the date of injury under subsection (b) of this section shall be the date of diagnosis of the disease. Subsections (d) and (e) of this section shall not apply to product liability actions involving claims for disease allegedly resulting from exposure to or use of the product.

(g) If the manufacturer or seller asserts that the statute of repose in subsection (d) or (e) of this section bars the product liability action, the manufacturer or seller shall have the burden of proving when the repose period began.

(h) The statutes of limitation and repose for product liability actions shall be subject to the tolling provisions of G.S. 1-17 and G.S. 1-22."

SECTION 4. This act becomes effective October 1, 2009, and applies to causes of action that accrue on or after that date.

SENATE BILL 882:
Statute of Repose/Products Liability

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 29, 2009
Introduced by:	Sen. Hartsell	**Prepared by:**	R. Erika Churchill Committee Counsel
Analysis of:	PCS to First Edition S882-CSST-20		

SUMMARY: ***Senate Bill 882 would clarify and reform the statutes of limitation and repose in product liability actions.***

[As introduced, this bill was identical to H851, as introduced by Rep. Faison, which is currently in House Commerce, Small Business, and Entrepreneurship, if favorable, Judiciary I.]

CURRENT LAW & BILL ANALYSIS:

Section 1. Repeals G.S. 1-50(a)(6), which prohibits actions for recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product brought more than 6 years after the date of initial purchase for use or consumption.

Section 2. G.S. 99B-2(b) permits a buyer of the product involved, a member of the buyer's family or guest of a member of the buyer's family, a guest of the buyer, or an employee of the buyer to bring a product liability action directly against the manufacturer of the product for breach of implied warranty. A product liability action is defined as including "any action brought for or on account of personal injury, death or property damage caused by or resulting from the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, testing, listing, certifying, warning, instructing, marketing, selling, advertising, packaging, or labeling of any product." G.S. 99B-1(3).

The proposed committee substitute would also allow lessees, members of the lessee's family or their guest, guests of the lessee, or employees of the lessee to bring a product liability action directly against the manufacturer for breach of implied warranty.

Section 3. Enact a new statute to implement a statute of limitations on product liability actions, and implement a statute of repose on product liability actions.

G.S. 99B-7(b) is a statute of limitations on all product liability actions, except wrongful death, stating the action shall be commenced within 3 years of the date on which the property damage or injury occurred.

G.S. 99B-7(c) is a statute of limitations on wrongful death product liability actions, stating the action shall be commenced within 2 years of the date of death, provided the claim would not have been barred by the statute of repose for product liability actions.

G.S. 99B-7(d) is a statute of repose on all product liability actions against manufacturers. If the action is involving a product manufactured in North Carolina, the action is to be brought within 6 years after the product was first sold or leased for use or consumption. If the action is involving a product manufactured outside North Carolina, then the statute of repose applicable to the jurisdiction of manufacture applies, but in no event less than 6 years. In the instance the jurisdiction of manufacture does not have a statute of repose, then only the statute of limitations in G.S. 99B-7 apply.

G.S. 99B-7(e) is a statute of repose on product liability actions against sellers. If the action is involving a seller in North Carolina, the action is to be brought within 6 years after the product was first sold or leased for use or consumption. If the action is involving a seller outside North Carolina, then the

statute of repose applicable to the jurisdiction of manufacture applies, but in no event less than 6 years. In the instance the jurisdiction of manufacture does not have a statute of repose, then only the statute of limitations in G.S. 99B-7 apply.

G.S. 99B-7(f) specifically states that the statutes of repose do not apply to product liability actions involving claims for disease allegedly resulting from exposure to or use of the product and specifically states that the date of diagnosis of the disease is the date of injury.

G.S. 99B-7(g) places the burden of proof on the manufacturer or seller asserting the statute of repose bars the product liability action.

G.S. 99B-7(h) provides that both the statutes of limitation and repose may be tolled for disability (G.S. 1-17) and death (G.S. 1-22).

EFFECTIVE DATE: October 1, 2009, and applies to actions accruing on or after that date.

BACKGROUND:

Statute of Repose: A statute barring any suit that is brought after a specified time since the defendant acted (such as by designing or manufacturing a product), even if this period ends before the plaintiff has suffered a resulting injury. Black's Law Dictionary, 8th ed.

Statute of Limitations: A law that bars claims after a specified period; specifically a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered). Black's Law Dictionary, 8th ed.

S882-SMST-25(CSST-20) v3

SENATE JUDICIARY I COMMITTEE
(Civil)

May 5, 2009
9:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Tuesday, May 5, 2009, in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin Nesbitt, Vice-Chairmen Pete Brunstetter, R. C. Soles, and Josh Stein, members, Charlie Albertson, Phil Berger, Andrew Brock, Harry Brown, Malcolm Graham, Clark Jenkins, Floyd McKissick, Tony Rand, David Rouzer, Richard Stevens, and Jerry Tillman; Staff Counsel Erika Churchill, Giles Perry, Susan Sitze, and Bill Patterson; Committee Assistant Jan Lee.

Chairman Nesbitt called the meeting to order and said without objections from the committee members the meeting today will be two hours long since it is so near the bill crossover time and the Appropriations Committee is not meeting at this time.

Chairman Nesbitt recognized the pages serving the committee today and welcomed them.

Senator Phil Berger was recognized to explain S.B. 605 – Assets of Ward's Estate. He said S.B. 605 is a Proposed Committee Substitute and moved for adoption for discussion. Staff Counsel Bill Patterson explained the bill assisted by someone from The Bar Association. After questions and discussion Senator Rand moved to give the original bill an unfavorable report and favorable for the Proposed Committee Substitute for S.B. 605, and it passed unanimously.

Chairman Nesbitt recognized Senator Phil Berger to explain S.B. 606 – Notice To Creditors Without Estate Administration. Senator Berger said S.B. 606 has become a Proposed Committee Substitute and moved for adoption for discussion. Senator Berger explained S.B. 606, assisted by someone from the Bar Association and Giles Perry and after questions and discussion Senator Rand moved to give the original bill an unfavorable report and favorable for the Proposed Committee Substitute for S.B. 606 and it passed unanimously.

Chairman Nesbitt again recognized Senator Phil Berger to explain S.B. 724 - Effect of Caveat on Estate Administration. Senator Berger explained that S.B. 724 is a Proposed Committee Substitute and moved to adopt the Proposed Committee Substitute for S.B. 724 for discussion. Staff Counsel Giles Perry and someone from the Bar Association assisted Senator Berger in explaining The Proposed Committee Substitute for S.B. 724 and after questions and discussion Senator Rand moved to give the original bill an unfavorable report and favorable for the Proposed Committee Substitute for S.B. 724 and it passed unanimously.

Senator Charlie Albertson was recognized to explain S.B. 167 – No Smoking/Cell Phones on Prison Grounds. Senator Albertson said this is a Proposed Committee Substitute for S.B. 167 and moved for adoption of the Proposed Committee Substitute for S.B. 167 for discussion by the committee. Staff Counsel Susan Sitze and James French and Mary Beth Kaye with the Prison assisted Senator Albertson with the explanation of the PCS for S.B. 167. After questions and discussion Staff Counsel pointed out a part of the bill that needed to be reworded. Senator Nesbitt suggested the PCS for S.B. 167 be displaced for the Staff Counsel to do some further work on it. The committee agreed unanimously.

Senator Dan Clodfelter was recognized to explain S.B. 510 – Expand Interpreting Services. Senator Clodfelter said this bill has become a Proposed Committee Substitute for S.B. 510 due to a version of the bill in the House that has some different wording and moved for the adoption of the PCS for S.B. 510 to be discussed by the committee. Senator Clodfelter was assisted by Staff Erika Churchill in explaining the Proposed Committee Substitute for S.B. 510. Senator Clodfelter said if the PCS for S.B. 510 passes it should be referred to Appropriations since it includes money being requested. After questions and discussion Senator Brunstetter moved to give the original bill an unfavorable report and favorable to the Proposed Committee Substitute for S.B. 510. It passed unanimously and will be referred to the Appropriations Committee.

Senator Dan Clodfelter was recognized again to explain S.B.514 – Magistrates Provide Appointment of Counsel and said this has become a Proposed Committee Substitute for S.B. 514 and moved for adoption of the PCS for S.B. 514 to be discussed by the committee. Senator Clodfelter was assisted by Staff Counsel Susan Sitze and Eddie Caldwell from the North Carolina Sheriff Association in explanation of the PCS for S.B. 514. After questions and discussion by the committee Senator Albertson moved to give the original bill an unfavorable report and favorable to the Proposed Committee Substitute for S.B. 514 and it passed unanimously.

Senator McKissick was recognized to explain S.B. 464 – Prevent Racial Profiling. Senator McKissick explained that S.B. 464 amends the law requiring the collection of traffic law enforcement statistics in order to prevent racial profiling and was assisted by Susan Sitze. Eddie Caldwell with North Carolina Sheriff Association spoke on the bill. During questions and discussion of the bill Senator Stevens offered an amendment to the bill and moved for the adoption. The amendment was adopted unanimously. After many questions and discussion it was decided to displace the bill at this time and do some further work on it.

The meeting was adjourned at 10:45 a.m.

Copies of S.B. 605, Bill Analysis for S.B. 605, PCS for S.B.605, S.B. 606, Bill Analysis for S.B. 606, PCS for S.B. 606, S.B. 724, Bill Analysis for S.B. 724, S.B. 167, Bill Analysis for PCS for S.B. 167, S.B. 510, Bill Analysis for S.B. 510, PCS for S. B. 510, S.B. 514, PCS for S.B. 514, Bill Analysis for S.B. 514, S.B. 464, Bill Analysis for S.B. 464, Copy of Amendment for S.B. 464 are attached to these Minutes as Attachments I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX respectively.

Respectfully Submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W. Lee

Janette W. Lee
Committee Assistant

SENATE JUDICIARY I COMMITTEE
(Civil)

May 5, 2009
9:00 a.m. – Room 1027

MINUTES

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Chairman Nesbitt recognized Senator Phil Berger to explain S.B. 606 – Notice To Creditors Without Estate Administration. Senator Berger said S.B. 606 has become a Proposed Committee Substitute and moved for adoption for discussion. Senator Berger explained S.B. 606, assisted by someone from the Bar Association and Giles Perry and after questions and discussion Senator Rand moved to give the original bill an unfavorable report and favorable for the Proposed Committee Substitute for S.B. 606 and it passed unanimously.

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Respectfully Submitted,

Senator Martin L. Nesbitt
Chairman

Janette W. Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 605

Short Title:	Assets of Ward's Estate.	(Public)
Sponsors:	Senator Berger of Rockingham.	
Referred to:	Judiciary I.	

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE DEPOSIT OF ASSETS OF A WARD'S ESTATE INTO ANY FINANCIAL INSTITUTION AND TO MAKE OTHER CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 35A-1232 reads as rewritten:

"**§ 35A-1232. Exclusion of deposited money in computing amount of bond.**

(a) When it appears that the ward's estate includes ~~money~~ assets that ~~has~~ have been or will be deposited ~~in a bank in this State or invested in an account in an insured savings and loan association~~ or invested in an account with a financial institution upon condition that the ~~money or securities~~ assets will not be withdrawn except on authorization of the court, the court may, in its discretion, order that the ~~money~~ assets be so deposited or invested and exclude such deposited ~~money~~ assets from the computation of the amount of the bond or reduce the amount of the bond in respect of such ~~money~~ assets to such an amount as it may deem reasonable.

(b) The applicant for letters of ~~guardianship~~ guardianship, or a general guardian or guardian of the estate, may deliver to any such ~~bank or association~~ financial institution any such ~~money~~ assets in ~~his~~ the applicant's or the guardian's possession or may allow such ~~bank or association~~ financial institution to retain any such ~~money~~ assets already deposited or invested with it; in either event, the applicant or guardian shall secure and file with the court a written receipt including the agreement of the ~~bank or association,~~ financial institution, duly acknowledged by an authorized officer of the ~~bank or association,~~ financial institution, that the ~~money~~ assets shall not be allowed to be withdrawn except on authorization of the court. ~~In so receiving and retaining such money, the bank or association shall be protected to the same extent as though it had received the same from a person to whom letters of guardianship had been issued.~~

(c) The term ~~"account in an insured savings and loan association"~~ "account with a financial institution" as used in this section means any account in a bank, savings and loan ~~association that is insured by the Federal Deposit Insurance Corporation, by the Federal Savings and Loan Insurance Corporation, or by a mutual deposit guaranty association authorized by Article 7A of Chapter 54 of the North Carolina General Statutes.~~ association, credit union, trust company, or registered securities broker or dealer.

(d) The term ~~"money"~~ "assets" as used in this section ~~means the principal of~~ includes, but is not limited to, cash, stock, bonds, and other forms of securities in the ward's estate and does not include the income earned by ~~the principal~~ those assets, which may be withdrawn without any authorization of the court.

(e) The term "income" as used in this section means interest and ordinary dividends but does not include capital gains. Income that is not withdrawn shall be added to principal annually."

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

SENATE BILL 605: Assets of Ward's Estate

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 6, 2009
Introduced by:	Sen. Berger of Rockingham	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to First Edition S605-CSTG-4		

SUMMARY: ***Senate Bill 605 (PCS) would permit a ward's money that is deposited in accounts with credit unions, trust companies, and registered securities brokers and dealers to be excluded from the estate's value that is used in setting the amount of the guardian's bond, provided that the depositary institution agrees to permit only court-authorized withdrawals from the account. The bill would exclude only money so deposited, and not securities, from the estate's value used in setting the bond, and would clarify that the deposits qualifying for exclusion can be made by general guardians or guardians of the estate, as well as by applicants for letters of guardianship.***

CURRENT LAW: Under Article 7 of Chapter 35A of the General Statutes, the value of a ward's estate determines the amount of the bond required to be furnished by the guardian or the applicant for letters of guardianship. In calculating the estate's value, current law excludes money deposited in a bank or invested in an insured savings and loan association, when the bank or savings and loan association agrees that it will permit only court-authorized withdrawals from the ward's account.

BILL ANALYSIS: Senate Bill 605 would expand the types of accounts into which a ward's money can be deposited without being included in the value of the estate used in setting the amount of the guardian's bond, to include accounts held by credit unions, trust companies, and registered securities brokers and dealers. Under the bill, this exclusion would apply only to money, and not to securities, deposited in these institutions. The bill would also make it clear that money deposited by general guardians or guardians of the estate, as well as guardianship applicants, is excluded from the calculation of the value of the ward's estate used in setting the amount of the bond. (The PCS deletes provisions in the original bill substituting the term "assets" for "money" and defining the terms "assets" and "income" to include cash, stock, bonds, and other forms of securities.)

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

S605-SMTG-11(CSTG-4) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 605
PROPOSED COMMITTEE SUBSTITUTE S605-CSTG-4 [v.3]

4/7/2009 7:09:46 PM

Short Title: Assets of Ward's Estate. (Public)

Sponsors:

Referred to:

March 16, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE DEPOSIT OF MONEY OF A WARD'S ESTATE INTO ANY FINANCIAL INSTITUTION AND TO MAKE OTHER CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 35A-1232 reads as rewritten:

"**§ 35A-1232. Exclusion of deposited money in computing amount of bond.**

(a) When it appears that the ward's estate includes money that has been or will be deposited ~~in a bank in this State or invested in an account in an insured savings and loan association~~ in an account with a financial institution upon condition that the money ~~or securities~~ will not be withdrawn except on authorization of the court, the court may, in its discretion, order that the money be so deposited or invested and exclude such deposited money from the computation of the amount of the bond or reduce the amount of the bond in respect of such money to such an amount as it may deem reasonable.

(b) The applicant for letters of ~~guardianship~~ guardianship, or a general guardian or guardian of the estate, may deliver to any such ~~bank or association~~ financial institution any such money in ~~his~~ the applicant's or the guardian's possession or may allow such ~~bank or association~~ financial institution to retain any such money already deposited or invested with it; in either event, the applicant or guardian shall secure and file with the court a written receipt including the agreement of the ~~bank or association,~~ financial institution, duly acknowledged by an authorized officer of the ~~bank or association,~~ financial institution, that the money shall not be allowed to be withdrawn except on authorization of the court. In so receiving and retaining such money from an applicant for letters of guardianship, the ~~bank or association~~ financial institution shall be protected to the same extent as though it had received the same from a ~~person to whom letters of guardianship had been issued.~~ a general guardian or a guardian of the estate.

(c) The term ~~"account in an insured savings and loan association"~~ "account with a financial institution" as used in this section means any account in a bank, savings and loan ~~association that is insured by the Federal Deposit Insurance Corporation, by the Federal Savings and Loan Insurance Corporation, or by a mutual deposit guaranty association authorized by Article 7A of Chapter 54 of the North Carolina General Statutes.~~ association, credit union, trust company, or registered securities broker or dealer.

(d) The term "money" as used in this section means the principal of the ward's estate and does not include the income earned by the principal, which may be withdrawn without any authorization of the court.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 606

Short Title:	Notice to Creditors Without Estate Admin.	(Public)
Sponsors:	Senator Berger of Rockingham.	
Referred to:	Judiciary I.	

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 the Chapter.

"**§ 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 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:	Senate Judiciary I	**Date:**	April 13, 2009
Introduced by:	Sen. Berger of Rockingham	**Prepared by:**	Giles S. Perry
Analysis of:	PCS to First Edition S606-CSRWf-17		Committee Counsel

SUMMARY: ***Senate Bill 256 (PCS) 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 256 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-SMRW-66(CSRWf-17) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 606
PROPOSED COMMITTEE SUBSTITUTE S606-CSRWf-17 [v.1]

4/6/2009 10:56:42 AM

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 the 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 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.

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:	Senate Judiciary I	**Date:**	April 19, 2009
Introduced by:	Sen. Berger of Rockingham	**Prepared by:**	Giles S. Perry 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.

S724-SMRW-72(e1) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 167

Short Title:	No Smoking/Cell Phones on Prison Grounds.	(Public)
Sponsors:	Senators Albertson; Allran, Atwater, Bingham, Blake, Boseman, Clodfelter, Davis, Dorsett, Hartsell, Jenkins, Jones, Malone, Purcell, Rand, Rouzer, and Stevens.	
Referred to:	Judiciary I.	

February 16, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT SMOKING ON THE PREMISES OF CORRECTIONAL INSTITUTIONS AND TO MAKE IT A FELONY 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 prohibited in State correctional facilities.**

(a) The General Assembly finds that in order to protect the health, welfare, and comfort of inmates in the custody of the Department of Correction and to reduce the costs of inmate health care, it is necessary to prohibit inmates from using tobacco products ~~inside~~ 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.

(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. 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, or any person who knowingly gives or sells any tobacco product to a person who is not an inmate for delivery to an inmate, other than for authorized religious purposes, is guilty of a Class I felony.

(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 I felony."

SECTION 3. 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 4. This act becomes effective December 1, 2009, 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:	Senate Judiciary I	**Date:**	April 29, 2009
Introduced by:	Sen. Albertson	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S167-CSSA-21		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 167 prohibits smoking on the premises of correctional institutions, prohibits the possession of tobacco products or cell phones outside of a locked vehicle on the premises of correctional institutions, and makes it a criminal offense to provide tobacco products or cell phones to inmates in the custody of the Department of Correction.***

BILL ANALYSIS:

Section 1 amends G.S. 148-23.1 to prohibit the use and possession of tobacco products 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 creates a new G.S. 148-23.2, which prohibits the possession of a cell phone on the premises of a State correctional facility. 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 amends G.S. 14-258.1 to create 2 new offenses.

- A Class 1 misdemeanor for anyone who 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.
- A Class 1 misdemeanor for anyone who 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 requires the Department of Correction to provide notice to inmates, staff and the public of the prohibitions and penalties established in this act.

EFFECTIVE DATE: This act becomes effective March 1, 2010, and applies to acts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 510

Short Title:	Expand Interpreting Services.	(Public)
Sponsors:	Senators Clodfelter; Dannelly and Graham.	
Referred to:	Appropriations/Base Budget.	

March 11, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE EXPANSION OF STATE-REIMBURSED INTERPRETING SERVICES TO ENCOMPASS ALL COURT PROCEEDINGS IN WHICH AN INTERPRETER IS NECESSARY TO ASSIST THE COURT IN THE EFFICIENT TRANSACTION OF BUSINESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-314(f) reads as rewritten:

"(f) In any case in which the Judicial Department is bearing the costs of representation for a party and that party or a witness for that party does not speak or understand the English language, and the court appoints a foreign language interpreter to assist that party or witness, the reasonable fee for the interpreter's services is payable from funds appropriated to the Administrative Office of the Courts. ~~In order to facilitate the disposition of criminal or Chapter 50B cases, the~~ The court may authorize the use of a court interpreter, paid from funds appropriated to the Administrative Office of the Courts, in ~~cases~~ all proceedings in which an interpreter is necessary to assist the court in the efficient transaction of business. The appointment and payment shall be made in accordance with G.S. 7A-343(9c)."

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

SENATE BILL 510: Expand Interpreting Services

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 29, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to First Edition S510-CSST-19		Committee Counsel

SUMMARY: ***Senate Bill 510 would expand the authority of the courts to appoint foreign language interpreters in all cases before the court, effective July 1, 2009.***

[As introduced, this bill was identical to H1262, as introduced by Reps. Mackey, Jones, Womble, which is currently in House State Government/State Personnel, if favorable, Appropriations.]

[The pcs is identical to H1477, as introduced by Rep. Blue, which is currently in House Judiciary II, if favorable, Appropriations.}

CURRENT LAW: The courts have the authority to appoint foreign language interpreters in any criminal or Chapter 50B domestic violence case in which an interpreter is necessary to assist the court in the efficient transaction of business. The foreign language interpreter is paid from funds appropriated to the Administrative Office of the Courts. G.S. 7A-314(f). The Administrative Officer of the Courts is to prescribe policies and procedures for the appointment and payment of foreign language interpreters to be applied uniformly throughout the General Court of Justice. G.S. 7A-343(9c).

BILL ANALYSIS:

The proposed committee substitute would repeal the current law, and replace it with a new statutory section, G.S. 7A-314A. That section would:

- Permit the courts to pay for foreign language interpreters for parties or witnesses not speaking or understanding the English language. If the party in need of the interpreter is indigent, or a witness for an indigent party, then AOC and IDS may enter into a memorandum of understanding for the payment of the interpreting and translating services.
- Require a party electing to use an interpreter of their choice, instead of the interpreter provided by AOC, to pay for that interpreter.
- Clarify that AOC is not obligated to pay for an interpreter for non-court services and activities.
- Permit the court to charge a party with the cost of the interpreter if the party for whom the services were required failed to appear without good cause.

The proposed committee substitute also makes conforming changes and appropriates $1,422,641 for the next two fiscal years to AOC to fund additional foreign language interpreter services.

EFFECTIVE DATE: December 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 510
PROPOSED COMMITTEE SUBSTITUTE S510-CSST-19 [v.1]

4/29/2009 6:42:18 PM

Short Title: Expand Interpreting Services. (Public)

Sponsors:

Referred to:

March 11, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE EQUAL ACCESS TO COURT SERVICES AND TO FULLY FUND INTERPRETER NEEDS IN THE COURTS..

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-314(f) is repealed.

SECTION 2. Article 28 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-314A. Foreign language interpreting and translating services.**

(a) Notwithstanding any other provision of law, if a party or witness in the General Court of Justice does not speak or understand the English language, the cost of interpreting or translating services for the party or witness is payable from funds appropriated to the Judicial Department. With regard to a party for which the Judicial Department is bearing the costs of representation, or a witness for such a party, the Administrative Office of the Courts and the Office of Indigent Defense Services may enter into a memorandum of understanding for the payment of interpreting and translating services. The appointment and payment of interpreters and translators under this section shall be made in accordance with G.S. 7A-343(9c).

(b) If a party or witness elects to use an interpreter or translator of his or her own choice in lieu of an interpreter or translator provided by the Administrative Office of the Courts under this section, the party or witness shall bear the cost of the interpreter or translator.

(c) Except in cases in which the Judicial Department is bearing the costs of representation, nothing in this section shall be construed to obligate the Administrative Office of the Courts to bear the cost of interpreting or translating services for non-court services and activities, such as discovery, trial, preparation, and attorney-client meetings.

(d) The court may order a party or witness to bear the cost of interpreting or translating services when the party or witness was the person for whom the services were required and the party or witness, without good cause, failed to appear."

SECTION 3. G.S. 7A-343(9c) 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:

...

(9c) Prescribe policies and procedures for the appointment and payment of foreign language interpreters in those cases specified in ~~G.S. 7A-314(f).~~ G.S. 7A-314A. These policies and procedures shall be applied uniformly

throughout the General Court of Justice. After consultation with the Joint Legislative Commission on Governmental Operations, the Director may also convert contractual foreign language interpreter positions to permanent State positions when the Director determines that it is more cost-effective to do so.

...."

SECTION 4 G.S. 7A-305(d) reads as rewritten:

"(d) The following expenses, when incurred, are assessable or recoverable, as the case may be. The expenses set forth in this subsection are complete and exclusive and constitute a limit on the trial court's discretion to tax costs pursuant to G.S. 6-20:

(1) Witness fees, as provided by law.

(2) Jail fees, as provided by law.

(3) Counsel fees, as provided by law.

(4) Expense of service of process by certified mail and by publication.

(5) Costs on appeal to the superior court, or to the appellate division, as the case may be, of the original transcript of testimony, if any, insofar as essential to the appeal.

(6) Fees for personal service and civil process and other sheriff's fees, as provided by law. Fees for personal service by a private process server may be recoverable in an amount equal to the actual cost of such service or fifty dollars ($50.00), whichever is less, unless the court finds that due to difficulty of service a greater amount is appropriate.

(7) Fees of mediators appointed by the court, mediators agreed upon by the parties, guardians ad litem, referees, receivers, commissioners, surveyors, arbitrators, appraisers, and other similar court appointees, as provided by law. The fee of such appointees shall include reasonable reimbursement for stenographic assistance, when necessary.

(8) Fees of ~~interpreters, when authorized and approved by the court.~~ interpreters not paid by the Administrative Office of the Courts under G.S. 7A-314A.

(9) Premiums for surety bonds for prosecution, as authorized by G.S. 1-109.

(10) Reasonable and necessary expenses for stenographic and videographic assistance directly related to the taking of depositions and for the cost of deposition transcripts.

(11) Reasonable and necessary fees of expert witnesses solely for actual time spent providing testimony at trial, deposition, or other proceedings.

Nothing in this subsection or in G.S. 6-20 shall be construed to limit the trial court's authority to award fees and expenses in connection with pretrial discovery matters as provided in Rule 26(b) or Rule 37 of the Rules of Civil Procedure, and no award of costs made pursuant to this section or pursuant to G.S. 6-20 shall reverse or modify any such orders entered in connection with pretrial discovery."

SECTION 5. There is appropriated from the General Fund to the Administrative Office of the Courts the sum of one million four hundred twenty-two thousand six hundred forty-one dollars ($1,422,641) for the 2009-2010 fiscal year and the sum of one million four hundred twenty-two thousand six hundred forty-one dollars ($1,422,641) for the 2010-2011 fiscal year to fund additional foreign language interpreter services.

SECTION 6. On and after the effective date of this act, no order for reimbursement may be entered against a party or witness for the services of a court-appointed interpreter or translator rendered prior to the effective date of this act, except as provided in G.S. 7A-314A(d) or G.S. 7A-305(d).

SECTION 7. Section 5 of this act becomes effective July 1, 2009. The remainder of this act becomes effective December 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 514

Short Title:	Magistrates Provide Appointment of Counsel.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

March 11, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE MAGISTRATES WITH THE AUTHORITY TO PROVIDE FOR THE APPOINTMENT OF COUNSEL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-292 reads as rewritten:

"**§ 7A-292. Additional powers of magistrates.**

In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

(1) To administer oaths;
(2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina;
(3) When authorized by the chief district judge, to take depositions and examinations before trial;
(4) To issue subpoenas and capiases valid throughout the county;
(5) To take affidavits for the verification of pleadings;
(6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41;
(7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes;
(8) To take acknowledgments of instruments, as provided in G.S. 47-1;
(9) To perform the marriage ceremony, as provided in G.S. 51-1;
(10) To take acknowledgment of a written contract or separation agreement between husband and wife; and
(11) Repealed by Session Laws 1973, c. 503, s. 9.
(12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.
(13) Repealed by Session Laws 1973, c. 503, s. 9.
(14) To accept the filing of complaints and to issue summons pursuant to Article 4 of Chapter 42A of the General Statutes in expedited eviction proceedings when the office of the clerk of superior court is closed.
(15) To provide for appointment of counsel pursuant to Article 36 of this Chapter."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 514
PROPOSED COMMITTEE SUBSTITUTE S514-CSSA-22 [v.1]

4/29/2009 5:34:22 PM

Short Title: Magistrates Provide Appointment of Counsel. (Public)

Sponsors:

Referred to:

March 11, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE CERTAIN MAGISTRATES WITH THE AUTHORITY TO PROVIDE FOR THE APPOINTMENT OF COUNSEL WHEN AUTHORIZED BY THE CHIEF DISTRICT JUDGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-292 reads as rewritten:

"**§ 7A-292. Additional powers of magistrates.**

In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

(1) To administer ~~oaths;~~oaths.

(2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North ~~Carolina;~~Carolina.

(3) When authorized by the chief district judge, to take depositions and examinations before ~~trial;~~trial.

(4) To issue subpoenas and capiases valid throughout the ~~county;~~county.

(5) To take affidavits for the verification of ~~pleadings;~~pleadings.

(6) To issue writs of habeas corpus ad testificandum, as provided in ~~G.S. 17-41;~~G.S. 17-41.

(7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General ~~Statutes;~~Statutes.

(8) To take acknowledgments of instruments, as provided in ~~G.S. 47-1;~~G.S. 47-1.

(9) To perform the marriage ceremony, as provided in ~~G.S. 51-1;~~G.S. 51-1.

(10) To take acknowledgment of a written contract or separation agreement between husband and ~~wife; and~~wife.

(11) Repealed by Session Laws 1973, c. 503, s. 9.

(12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.

(13) Repealed by Session Laws 1973, c. 503, s. 9.

(14) To accept the filing of complaints and to issue summons pursuant to Article 4 of Chapter 42A of the General Statutes in expedited eviction proceedings when the office of the clerk of superior court is closed.

(15) When authorized by the chief district judge, as permitted in G.S. 7A-146(11), to provide for appointment of counsel pursuant to Article 36 of this Chapter."

SECTION 2. G.S. 7A-146 reads as rewritten:

"**§ 7A-146. Administrative authority and duties of chief district judge.**

The chief district judge, subject to the general supervision of the Chief Justice of the Supreme Court, has administrative supervision and authority over the operation of the district courts and magistrates in his district. These powers and duties include, but are not limited to, the following:

(1) Arranging schedules and assigning district judges for sessions of district ~~courts;~~courts.

(2) Arranging or supervising the calendaring of noncriminal matters for trial or ~~hearing;~~hearing.

(3) Supervising the clerk of superior court in the discharge of the clerical functions of the district ~~court;~~court.

(4) Assigning matters to magistrates, and consistent with the salaries set by the Administrative Officer of the Courts, prescribing times and places at which magistrates shall be available for the performance of their duties; however, the chief district judge may in writing delegate his authority to prescribe times and places at which magistrates in a particular county shall be available for the performance of their duties to another district court judge or the clerk of the superior court, and the person to whom such authority is delegated shall make monthly reports to the chief district judge of the times and places actually served by each ~~magistrate; and~~magistrate.

(5) Making arrangements with proper authorities for the drawing of civil court jury panels and determining which sessions of district court shall be jury ~~sessions;~~sessions.

(6) Arranging for the reporting of civil cases by court reporters or other authorized ~~means;~~means.

(7) Arranging sessions, to the extent practicable for the trial of specialized cases, including traffic, domestic relations, and other types of cases, and assigning district judges to preside over these sessions so as to permit maximum practicable specialization by individual ~~judges;~~judges.

(8) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(b), effective July 15, 1992.

(9) Assigning magistrates during an emergency to temporary duty outside the county of their residence but within that district; and, upon the request of a chief district judge of an adjoining district and upon the approval of the Administrative Officer of the Courts, to temporary duty in the district of the requesting chief district ~~judge; and~~judge.

(10) Designating another district judge of his district as acting chief district judge, to act during the absence or disability of the chief district judge.

(11) Designating certain magistrates who may appoint counsel pursuant to Article 36 of this Chapter. This authority may only be designated to magistrates who are duly licensed attorneys and cannot give any magistrate (i) authority to appoint counsel for first degree murder offenses or (ii) authority to accept a waiver of counsel."

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

SENATE BILL 514:
Magistrates Provide Appointment of Counsel

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 29, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S514-CSSA-22		

SUMMARY: ***The proposed committee substitute for Senate Bill 514 provides certain magistrates with the authority to provide for the appointment of counsel when authorized by the chief district judge.***

BILL ANALYSIS:

Section 1 amends G.S. 7A-292 to grant authority to magistrates to provide for the appointment of counsel, when authorized by the chief district judge.

Section 2 amends G.S. 7A-146 to grant authority to chief district judges to designate certain magistrates the authority to provide for appointment of counsel. The authority may only be designated to magistrates who are duly licensed attorneys and cannot give any magistrate (i) authority to appoint counsel for first degree murder offenses or (ii) authority to accept a waiver of counsel.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 464

Short Title:	Prevent Racial Profiling.	(Public)
Sponsors:	Senators McKissick; Atwater, Berger of Franklin, Boseman, Clary, Dorsett, Foriest, Graham, Kinnaird, Nesbitt, Purcell, Shaw, Stevens, and Weinstein.	
Referred to:	Judiciary I.	

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REQUIRING THE COLLECTION OF TRAFFIC LAW ENFORCEMENT STATISTICS IN ORDER TO PREVENT RACIAL PROFILING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-10.01 reads as rewritten:

"**§ 114-10.01. Collection of traffic law enforcement statistics.**

(a) In addition to the duties set forth in G.S. 114-10, the Division of Criminal Statistics shall collect, correlate, and maintain the following information regarding traffic law enforcement by law enforcement officers:

(1) The number of drivers stopped for routine traffic enforcement by law enforcement officers, the officer making each stop, the date each stop was made, the agency of the officer making each stop, and whether or not a citation or warning was issued.

(2) Identifying characteristics of the drivers stopped, including the race or ethnicity, approximate age, and gender.

(3) The alleged traffic violation that led to the stop.

(4) Whether a search was instituted as a result of the stop.

(5) Whether the vehicle, personal effects, driver, or passenger or passengers were searched, and the race or ethnicity, approximate age, and gender of each person searched.

(6) Whether the search was conducted pursuant to consent, probable cause, or reasonable suspicion to suspect a crime, including the basis for the request for consent, or the circumstances establishing probable cause or reasonable suspicion.

(7) Whether any contraband was found and the type and amount of any such contraband.

(8) Whether any written citation or any oral or written warning was issued as a result of the stop.

(9) Whether an arrest was made as a result of either the stop or the search.

(9a) If an arrest was made, whether there were minor children in the vehicle at the time of that arrest and whether they were left in the custody of a responsible adult.

(10) Whether any property was seized, with a description of that property.

(11) Whether the officers making the stop encountered any physical resistance from the driver or passenger or passengers.

(12) Whether the officers making the stop engaged in the use of force against the driver, passenger, or passengers for any reason.
(13) Whether any injuries resulted from the stop.
(14) Whether the circumstances surrounding the stop were the subject of any investigation, and the results of that investigation.
(15) The geographic location of the stop; if the officer making the stop is a member of the State Highway Patrol, the location shall be the Highway Patrol District in which the stop was made; for all other law enforcement officers, the location shall be the city or county in which the stop was made.

(b) For purposes of this section, "law enforcement officer" means any of the following:
(1) All State law enforcement officers.
(2) Law enforcement officers employed by county sheriffs or county police departments.
(3) Law enforcement officers employed by police departments in municipalities with a population of 10,000 or more persons.
(4) Law enforcement officers employed by police departments in municipalities employing five or more full-time sworn officers for every 1,000 in population, as calculated by the Division for the calendar year in which the stop was made.

(c) The identifying characteristics of the drivers stopped, as required by subdivision (a)(2) of subsection (a) of this section, shall be recorded and correlated for all impaired driving checks under G.S. 20-16.3A and all other types of roadblocks, vehicle checks, or checkpoints. The other information required by subsection (a) of this section need not be collected in connection with impaired driving checks under G.S. 20-16.3A or other types of roadblocks, vehicle checks, or checkpoints that are consistent with the laws of this State and with the State and federal constitutions, ~~except when~~ unless those stops result in a warning, search, seizure, arrest, or any of the other activity described in subdivisions (4) through (14) of subsection (a) of this ~~section.~~ section, in which case all of the information required by subsection (a) of this section shall be collected.

(d) ~~The identity of the law enforcement officer making the stop required by subdivision (1) of subsection (a) of this section may be accomplished by assigning~~ Each law enforcement officer making a stop covered by subdivision (1) of subsection (a) of this section shall be assigned an anonymous identification ~~numbers to each officer in an~~ number by the officer's employing agency. The anonymous identifying number shall be public record and shall be reported to the Division to be correlated along with the data collected under subsection (a) of this section. The correlation between the identification numbers and the names of the officers shall not be a public record, and shall not be disclosed by the agency except when required by order of a court of competent jurisdiction to resolve a claim or defense properly before the court.

(d1) Any agency subject to the requirements of this section shall submit information collected under subsection (a) of this section to the Division within 30 days of the close of each month. Any agency that does not submit the information as required by this subsection shall be ineligible to apply for any law enforcement grants available by or through the State.

(e) The Division shall publish and distribute by December 1 of each year a list indicating the law enforcement officers that will be subject to the provisions of this section during the calendar year commencing on the following January 1."

SECTION 2. This act becomes effective January 1, 2010.

SENATE BILL 464: Prevent Racial Profiling

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 29, 2009
Introduced by:	Sen. McKissick	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 464 amends the law requiring the collection of traffic law enforcement statistics in order to prevent racial profiling.***

BILL ANALYSIS: Senate Bill 464 amends G.S. 114-10.01; regarding collection of traffic law enforcement statistics, as follows:

- If an arrest was made, requires information to be collected on whether there were minor children in the vehicle at the time of the arrest and whether they were left in the custody of a responsible adult.
- Requires the collection of identifying characteristic of any driver stopped at impaired driving checks, roadblocks, vehicle checks, or checkpoints.
- Requires employing law enforcement agencies to assign each officer an anonymous identifying number and to make those numbers public record.
- Requires agency subject to the reporting requirements to submit the collected information to the Division of Criminal Statistics within 30 days of the close of each month. Any agency that does not submit the information on time shall be ineligible to apply for any law enforcement grants available by or through the State.

EFFECTIVE DATE: This act becomes effective January 1, 2010.

Attachment XIX

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 464 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Stevens

moves to amend the bill on page 2, line 43

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"ineligible to apply for any law enforcement grants available by or through the State until the information is submitted. which is reasonably available"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE JUDICIARY I COMMITTEE
(Civil)

May 7, 2009
9:00-11:00 A.M.

MINUTES

The Senate Judiciary I Committee met Thursday, May 7, 2009, in Room 1027 of the Legislative Building. Senators present were: Committee Chairman Martin Nesbitt, Vice-Chairmen Dan Clodfelter, Pete Brunstetter, R. C. Soles, and Josh Stein; members, Senators Charlie Albertson, Phil Berger, Andrew Brock, Harry Brown, Debbie Clary, David Hoyle, Clark Jenkins, Ellie Kinnaird, Floyd McKissick, Tony Rand, David Rouzer, Richard Stevens, and Jerry Tillman; Staff Counsel Erika Churchill, Giles Perry, Susan Sitze, and Bill Patterson; Committee Assistant Jan Lee.

Vice-Chairman Dan Clodfelter presided and called the meeting to order and recognized Chairman Nesbitt to explain S.B. 954 – Protections from Abusive Debt Buyers. Chairman Nesbitt said S.B. 954 is a Proposed Committee Substitute and moved for adoption of the PCS for S.B. 954 to be discussed. He said this PCS for S.B. 954 enacts new restrictions relating to the actions of debt buyers, and increases the civil liability of collection agencies and debt collectors who violate the provisions of State law regulating their actions. Staff Counsel Giles Perry assisted with explanation of the bill by sections. Mr. Robert Egleson and Mr. Rich Monroe were introduced and spoke against the bill and Mr. Glen Barfield and Mr. Charlie Hoff spoke in favor of the bill. After questions and discussion by the committee Senator McKissick made the motion to give the original bill an unfavorable report and favorable to the Proposed Committee Substitute for S.B. 954 and it passed unanimously.

Vice-Chairman Clodfelter recognized Chairman Nesbitt to explain S.B. 955 – Bicycle Lights at Night. This bill is a Proposed Committee Substitute for S.B. 955 and Chairman Nesbitt ask that the Proposed Committee Substitute for S.B. 955 be adopted for discussion. Chairman Nesbitt explained the bill and during discussion Senator Soles sent forth an amendment and it was adopted. Senator Stein made the motion to insert the amendment into the Proposed Committee Substitute for S.B. 955 and that the original bill be given an unfavorable report and favorable to the Proposed Committee Substitute for S.B. 955 and it passed unanimously.

Chairman Nesbitt recognized Senator McKissick to explain S.B. 984 – Access To Juvenile Records/Violent Offenders. Senator McKissick said S.B. 984 has become a Proposed Committee Substitute and made the motion to adopt it for discussion. Senator McKissick explained the bill assisted by Staff Counsel Susan Sitze and Judge Marcia Morey a District Court Judge from Durham who has worked with juveniles for some time. During questions and discussion Senator Kinnaird offered an amendment and after questions and discussion the members voted on the amendment and it failed. Senator

Rand made the motion to give the original bill an unfavorable report and favorable to the Proposed Committee Substitute for S.B. 984.

Senator Soles was recognized to explain S.B. 56 - Assistance to Voters. Senator Soles explained S.B. 56 has become a Proposed Committee Substitute and moved for adoption to discuss. Senator Soles explained the Proposed Committee Substitute for S.B. 56 and after discussion Senator Clodfelter made the motion to give the original bill an unfavorable report and favorable for the Proposed Committee Substitute for S.B. 56, The motion passed unanimously.

Senator Rucho was recognized to explain S.B. 713 – Removal of Electronic Monitoring Device. Senator Rucho said S.B. 713 has become a Proposed Committee Substitute and moved for the adoption of the Proposed Committee Substitute for S.B. 713. He explained the bill assisted by Staff Counsel Susan Sitze. During the discussion and questions Senator Rand proposed an amendment and the amendment passed. Senator McKissick offered a second amendment and it passed. Senator Clodfelter made the motion to give the original bill an unfavorable report and roll the two amendments into the Proposed Committee Substitute for S.B. 713 and it passed unanimously.

Senator Clodfelter was recognized to explain S.B. 622 – Undertaking to Stay Money Judgment. Senator Clodfelter explained the bill and after questions and discussion Senator Rand made the motion to give S.B. 622 Undertaking to Stay Money Judgment a favorable report and it passed unanimously.

Senator Clodfelter was again recognized to explain S.B. 716 – 2009 Omnibus Campaign Law Changes. Senator Clodfelter explained the bill and after questions and discussion Senator Stein made a motion to give the bill a favorable report and it passed unanimously.

Senator Clodfelter was recognized to explain S.B. 718 – 2009 Omnibus Election Law Changes. Senator Clodfelter explained the bill and after some discussion and a question about an amendment the bill was displaced to come back to. The committee returned attention to S.B. 718 and Senator Stevens offered an amendment. The amendment was adopted and on motion made by Senator Rand the amendment will be rolled into S.B. 718 and it will become a Proposed Committee Substitute and the original bill be given an unfavorable report and favorable for the Proposed Committee Substitute for S.B. 718. The motion passed unanimously.

Senator Stein was recognized to explain S.B. 763 – Legal Services Clarification. Staff Counsel said the bill is now a Proposed Committee Substitute for S.B. 763 and Senator Stein moved for the adoption of the PCS to be discussed. Senator Stein explained the bill and offered an amendment it passed and Senator Rand made the motion the amendment be rolled into the Proposed Committee Substitute and the original bill be given an unfavorable report and favorable to the Proposed Committee Substitute for S.B. 763. The motion passed unanimously.

Senator Stein was recognized to explain S.B. 764 – Real Estate/Settlement Agent Embezzlement. Staff Counsel said the bill is now a Proposed Committee Substitute for S.B. 764 and Senator Stein moved for the adoption of the PCS to be discussed. He said the Bar Association asked him to introduce this bill and continued to explain. Senator Clodfelter made the motion to give the original bill an unfavorable report and favorable to the Committee Substitute for S.B. 764 and it passed unanimously.

Chairman Nesbitt recognized Senator Rand to explain S.B. 797 – Reasons for Judge's Disqualification. Staff Counsel Giles Perry said the bill is now a Proposed Committee Substitute and Senator Rand moved for adoption of the PCS for discussion. Senator Rand explained the PCS for S.B. 797 assisted by Staff Counsel Giles Perry. Senator Hoyle made the motion to give the original bill an unfavorable report and favorable to the Proposed Committee Substitute for S.B. 797 and it passed unanimously.

Senator Stevens was recognized to bring back to the attention of the committee S.B. 870 Make General Statutes Gender Neutral and the committee agreed. Senator Stevens said the bill is now a Proposed Committee Substitute for S.B. 870 and moved for adoption to be discussed. He explained the PCS assisted by Giles Perry and Bill Patterson. Senator Hoyle made the motion to give the original bill an unfavorable report and favorable to the Proposed Committee Substitute for S.B. 870. It passed unanimously.

Senator Albertson was recognized to bring back to the committee S.B. 167 – No Smoking/Cell Phones on Prison Grounds. Senator Albertson said this bill is now a Proposed Committee Substitute for S.B. 167 and moved for adoption for discussion. He explained the PCS assisted by Staff Counsel Susan Sitze and on motion by Senator Stein the original bill was given an unfavorable report and favorable to the Proposed Committee Substitute for S.B. 167 and passed unanimously.

Senator McKissick was recognized to explain S.B. 464 – Prevent Racial Profiling. Senator McKissick said this bill was brought back to the committee from last meeting and is now a Proposed Committee Substitute for S.B. 464 and made the motion to adopt it for discussion. He explained changes made to the bill that were concerns of the committee. Mr. Eddie Caldwell with the North Carolina Sheriff's Association and Sorien Schmidt with Action For Children In North Carolina spoke and still have some concerns with some of the wording in the bill. After concerns expressed by the committee the bill will be put off for work to be done on it and come back to the next meeting.

The meeting was adjourned at 1:40 p.m.

Copies of S.B. 954,PCS for S.B. 954, Bill Analysis for S.B. 954, S.B. 955, PCS for S.B. 955, Amendment for S.B. 955, S.B. 984, PCS for S.B. 984, Bill Analysis for PCS for S.B. 984, Amendment for S.B. 984, S.B. 56, PCS for S.B. 56, S.B. 713, PCS for S.B. 713, Bill Analysis for S.B. 713, Amendment for S.B. 713, S.B. 622, Bill Analysis for S.B. 622, S.B. 716, PCS for S.B. 716, S.B. 718, Bill Analysis for S.B. 718, Amendment for S.B. 718, S.B. 763, PCS for S.B. 763, Bill Analysis for S.B. 763, S.B. 764, PCS for S.B. 764, Bill Analysis for S.B. 764, S.B. 797, PCS for S.B. 797, Bill Analysis for PCS for S.B. 797, S.B. 870, PCS for S.B. 870, S.B. 167, PCS for S.B. 167, Bill Analysis for PCS for S.B. 167, PCS for S.B. 464, are attached to these minutes as Attachments 1,2,3,4,5,6,7,8,9,10,11,12 11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38, respectively.

Respectfully Submitted,

Senator Martin L. Nesbitt
Chairman

Janette W. Lee
Committee Assistant

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Pete Brunstetter, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman
Senator Josh Stein, Vice Chairman

Thursday, May 7, 2009, 9:00 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills to be considered:

	SB 954	Protections from Abusive Debt Buyers.	Senator Nesbitt, Jr.
	SB 965	Civil Liability/Prohibited Debt Collection.	Senator Nesbitt, Jr.
	SB 984	Access to Juvenile Records/Violent Offenders.	Senator McKissick
	SB 167	No Smoking/Cell Phones on Prison Grounds.	Senator Albertson
	SB 464	Prevent Racial Profiling.	Senator McKissick
	SB 622	Undertaking to Stay Money Judgment.	Senator Clodfelter
	SB 713	Removal of Electronic Monitoring Device.	Senator Rucho
	SB 716	2009 Omnibus Campaign Finance Law Changes.	Senator Clodfelter
	SB 718	2009 Omnibus Election Law Changes.	Senator Clodfelter
	SB 763	Legal Services Clarification.	Senator Stein
	SB 764	Real Estate/Settlement Agent Embezzlement.	Senator Stein
	SB 797	Reasons for Judge's Disqualification.	Senator Rand
	SB 870	Make General Statutes Gender Neutral.	Senator Stevens
	SB 955	Bicycle Lights at Night.	Senator Nesbitt, Jr.
	SB 56	Assistance to Voters.	Senator Soles, Jr.

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 954

Short Title:	Protections from Abusive Debt Buyers.	(Public)
Sponsors:	Senator Nesbitt.	
Referred to:	Judiciary I.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ENACT CONSUMER PROTECTIONS AGAINST ABUSIVE DEBT BUYERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-70-15(b) reads as rewritten:

"(b) "Collection agency" ~~includes:~~includes any of the following:

(1) Any person that procures a listing of delinquent debtors from any creditor and that sells the listing or otherwise receives any fee or benefit from collections made on the ~~listing; and~~listing.

(2) Any person that attempts to or does transfer or sell to any person not holding the permit prescribed by this Article any system or series of letters or forms for use in the collection of delinquent accounts or claims which by direct assertion or by implication indicate that the claim or account is being asserted or collected by any person, firm, corporation, or association other than the creditor or owner of the claim or ~~demand; and~~demand.

(3) An in-house collection agency, whereby a person, firm, corporation, or association sets up a collection service for his or its own business and the agency has a name other than that of the business.

(4) A 'debt buyer.' As used in this subdivision the term 'debt buyer' means a person or entity that purchases delinquent or charged-off consumer loans, receivables, or other consumer debt, whether it collects the debt itself or hires a third party for collection or an attorney-at-law for litigation in order to collect such debt."

SECTION 2. G.S. 58-70-115 reads as rewritten:

"**§ 58-70-115. Unconscionable means.**

No collection agency shall collect or attempt to collect any debt by use of any unconscionable means. ~~Such means include, but are not limited to,~~This prohibition applies to both collection agencies and third parties acting on behalf of collection agencies. For purposes of this section, a third party's use of an unconscionable mean may be attributed to the collection agency on behalf of whom the third party acts. As used in this section, the term 'unconscionable means' includes, but is not limited to, the following:

(1) Seeking or obtaining any written statement or acknowledgment in any form containing an affirmation of any debt by a consumer who has been declared bankrupt, an acknowledgment of any debt barred by the statute of limitations, or a waiver of any legal rights of the debtor without disclosing the nature and consequences of such affirmation or waiver and the fact that the consumer is not legally obligated to make such affirmation or waiver;

(2) Collecting or attempting to collect from the consumer all or any part of the collection agency's fee or charge for services rendered, collecting or attempting to collect any interest or other charge, fee or expense incidental to the principal debt unless legally entitled to such fee or charge;

(3) Communicating with a consumer whenever the collection agency has been notified by the consumer's attorney that he represents said consumer.

(4) Collecting, or attempting to collect, from a consumer a debt that is barred by a statute of limitations or is otherwise unrecoverable as a matter of law.

(5) Failing to comply with Part 5 of this Article."

SECTION 3. G.S. 58-70-130 reads as rewritten:

"**§ 58-70-130. Civil liability.**

(a) Any collection agency which violates Part 3 of this Article with respect to any debtor shall be liable to that debtor in an amount equal to the sum of any actual damages sustained by the debtor as a result of the violation.

(b) Any collection agency which violates Part 3 of this Article with respect to any debtor shall, in addition to actual damages sustained by the debtor as a result of the violation, also be liable to the ~~debtor only in an individual action, and its additional liability therein to that debtor shall be~~debtor for a penalty in such amount as the court may allow, which shall not be less than ~~one hundred dollars ($100.00)~~three thousand dollars ($3,000) for each violation nor greater than ~~two thousand dollars ($2,000)~~ six thousand dollars ($6,000) for each violation.

(c) The specific and general provisions of Part 3 of this Article shall constitute unfair or deceptive acts or practices proscribed herein or by G.S. 75-1.1 in the area of commerce regulated thereby. ~~Notwithstanding the provisions of G.S. 75-15.2 and 75-16, civil~~Civil penalties in excess of ~~two thousand dollars ($2,000)~~six thousand dollars ($6,000) for each violation shall not be ~~imposed, nor shall damages be trebled for any violation under Part 3 of this Article.~~imposed.

(d) The remedies provided by this section shall be cumulative, and in addition to remedies otherwise available. ~~Provided, that any~~Any punitive damages assessed against a collection agency shall not be reduced by the amount of the civil penalty assessed against such agency pursuant to subsection (b).

(e) The clear proceeds of civil penalties imposed under this section in suits instituted by the Attorney General shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 4. G.S. 6-21.2 reads as rewritten:

"**§ 6-21.2. Attorneys' fees in notes, etc., in addition to interest.**

Obligations to pay attorneys' fees upon any note, conditional sale contract or other evidence of indebtedness, in addition to the legal rate of interest or finance charges specified therein, shall be valid and enforceable, and collectible as part of such debt, if such note, contract or other evidence of indebtedness be collected by or through an attorney at law after maturity, subject to the following provisions:

(1) If such note, conditional sale contract or other evidence of indebtedness provides for attorneys' fees in some specific percentage of the "outstanding balance" as herein defined, such provision and obligation shall be valid and enforceable up to but not in excess of fifteen percent (15%) of said "outstanding balance" owing on said note, contract or other evidence of indebtedness.

(2) If such note, conditional sale contract or other evidence of indebtedness provides for the payment of reasonable attorneys' fees by the debtor, without specifying any specific percentage, such provision shall be construed to mean fifteen percent (15%) of the "outstanding balance" owing on said note, contract or other evidence of indebtedness.

(3) As to notes and other writing(s) evidencing an indebtedness arising out of a loan of money to the debtor, the "outstanding balance" shall mean the principal and interest owing at the time suit is instituted to enforce any security agreement securing payment of the debt and/or to collect said debt.

(4) As to conditional sale contracts and other such security agreements which evidence both a monetary obligation and a security interest in or a lease of specific goods, the "outstanding balance" shall mean the "time price balance" owing as of the time suit is instituted by the secured party to enforce the said security agreement and/or to collect said debt.

(5) The holder of an unsecured note or other writing(s) evidencing an unsecured debt, and/or the holder of a note and chattel mortgage or other security agreement and/or the holder of a conditional sale contract or any other such security agreement which evidences both a monetary obligation and a security interest in or a lease of specific goods, or his attorney at law, shall, after maturity of the obligation by default or otherwise, notify the maker, debtor, account debtor, endorser or party sought to be held on said obligation that the provisions relative to payment of attorneys' fees in addition to the "outstanding balance" shall be enforced and that such maker, debtor, account debtor, endorser or party sought to be held on said obligation has five days from the mailing of such notice to pay the "outstanding balance" without the attorneys' fees. If such party shall pay the "outstanding balance" in full before the expiration of such time, then the obligation to pay the attorneys' fees shall be void, and no court shall enforce such provisions.

(6) If the attorneys' fees are for services rendered to an assignee or a debt buyer, as defined in G.S. 58-70-15, a copy of the note, conditional sale contract, or other evidence of indebtedness, setting forth a party's obligation to pay attorneys' fees and containing a signature of the party, together with documents evidencing that the assignee or debt buyer owns the obligation to collect such fees, must be provided to the court before a court may enforce those provisions.

Notwithstanding the foregoing, however, if debtor has defaulted or violated the terms of the security agreement and has refused, on demand, to surrender possession of the collateral to the secured party as authorized by G.S. 25-9-609, with the result that said secured party is required to institute an ancillary claim and delivery proceeding to secure possession of said collateral; no such written notice shall be required before enforcement of the provisions relative to payment of attorneys' fees in addition to the outstanding balance."

SECTION 5. Article 70 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 5. Special Requirements in Actions Filed by Collection Agency Plaintiffs.

"**§ 58-70-145. Complaint of a collection agency plaintiff must contain certain allegations.**

In any cause of action that arises out of the conduct of a business for which a plaintiff must secure a permit pursuant to this Article, the complaint shall allege as part of the cause of action that the plaintiff is duly licensed under this Article and shall contain the name and number, if any, of the license and the governmental agency that issued it.

"**§ 58-70-150. Complaint of a debt buyer plaintiff must be accompanied by certain materials.**

In addition to the requirements of G.S. 58-70-145, in any cause of action initiated by a debt buyer, as that term is defined in G.S. 58-70-15, all of the following materials shall be attached to the complaint:

(1) A copy of the contract or other writing evidencing the original debt, which must contain a signature of the defendant. If a claim is based on credit card debt and no such signed writing evidencing the original debt ever existed, then copies of documents generated when the credit card was actually used must be attached.

(2) A copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain the original account number of the debt purchased and must clearly show the debtor's name associated with that account number.

"**§ 58-70-155. Prerequisites to entering a default or summary judgment against a debtor under this Part.**

(a) Prior to entry of a default judgment or summary judgment against a debtor in a complaint initiated by a debt buyer, the plaintiff shall file evidence with the court to establish the amount and nature of the debt.

(b) The only evidence sufficient to establish the amount and nature of the debt shall be properly authenticated business records that satisfy the requirements of Rule 803(b) of the North Carolina Rules of Evidence. The authenticated business records shall include at least all of the following items:

(1) The original account number.

(2) The original creditor.

(3) The amount of the original debt.

(4) An itemization of charges and fees claimed to be owed.

(5) The original charge-off balance, or, if the balance has not been charged off, an explanation of how the balance was calculated.

(6) An itemization of post charge-off additions, where applicable.

(7) The date of last payment.

(8) The amount of interest claimed and the basis for the interest charged."

SECTION 6. This act becomes effective October 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 954
PROPOSED COMMITTEE SUBSTITUTE S954-CSRW-29 [v.6]

5/6/2009 4:33:42 PM

Short Title: Protections from Abusive Debt Buyers. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ENACT CONSUMER PROTECTIONS AGAINST ABUSIVE DEBT BUYERS, AND TO INCREASE THE CIVIL LIABILITY OF COLLECTION AGENCIES AND DEBT COLLECTORS WHO VIOLATE THE PROVISIONS OF STATE LAW RELATING TO PROHIBITED ACTS OF COLLECTION AGENCIES AND DEBT COLLECTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-70-15(b) reads as rewritten:

"(b) "Collection agency" ~~includes:~~includes any of the following:

(1) Any person that procures a listing of delinquent debtors from any creditor and that sells the listing or otherwise receives any fee or benefit from collections made on the ~~listing; and~~listing.

(2) Any person that attempts to or does transfer or sell to any person not holding the permit prescribed by this Article any system or series of letters or forms for use in the collection of delinquent accounts or claims which by direct assertion or by implication indicate that the claim or account is being asserted or collected by any person, firm, corporation, or association other than the creditor or owner of the claim or ~~demand; and~~demand.

(3) An in-house collection agency, whereby a person, firm, corporation, or association sets up a collection service for his or its own business and the agency has a name other than that of the business.

(4) A 'debt buyer.' As used in this subdivision the term 'debt buyer' means a person or entity that purchases delinquent or charged-off consumer loans, receivables, or other delinquent consumer debt, including debts involving bankruptcy, whether it collects the debt itself or hires a third party for collection or an attorney-at-law for litigation in order to collect such debt."

SECTION 1A. G.S. 58-70-70 reads as rewritten:

"**§ 58-70-70. Receipt requirement.**

(a) Whenever a payment is received in cash from a debtor, forwardee, or other person, an original receipt or an exact copy thereof shall be furnished the individual from whom payment is received. Evidence of all receipts issued shall be kept in the permit holder's office for three years. All receipts issued must:

(1) Be prenumbered by the printer and used and filed in consecutive numerical order;

(2) Show the name, street address and permit number of the permit holder;
(3) Show the name of the creditor or creditors for whom collected;
(4) Show the amount and date paid; and
(5) Show the last name of the person accepting payment.

(b) Whenever a payment is received by a debt buyer, the receipt required by subsection (a) of this section shall also:

(1) Show the name of the creditor or creditors for whom collected, the account number assigned by the creditor or creditors for whom collected, and if the current creditor is not the original creditor, the account number assigned by the original creditor.
(2) State clearly whether the payment is accepted as either payment in full or as a full and final compromise of the debt, and if not, the receipt shall state clearly the balance due after payment is credited."

SECTION 2. G.S. 58-70-115 reads as rewritten:

"**§ 58-70-115. Unconscionable means.**

No collection agency shall collect or attempt to collect any debt by use of any unconscionable means. ~~Such means include, but are not limited to,~~This prohibition applies to both collection agencies and third parties acting on behalf of collection agencies. For purposes of this section, a third party's use of an unconscionable mean may be attributed to the collection agency on behalf of whom the third party acts. As used in this section, the term 'unconscionable means' includes, but is not limited to, the following:

(1) Seeking or obtaining any written statement or acknowledgment in any form containing an affirmation of any debt by a consumer who has been declared bankrupt, an acknowledgment of any debt barred by the statute of limitations, or a waiver of any legal rights of the debtor without disclosing the nature and consequences of such affirmation or waiver and the fact that the consumer is not legally obligated to make such affirmation or waiver;
(2) Collecting or attempting to collect from the consumer all or any part of the collection agency's fee or charge for services rendered, collecting or attempting to collect any interest or other charge, fee or expense incidental to the principal debt unless legally entitled to such fee or charge;
(3) Communicating with a consumer whenever the collection agency has been notified by the consumer's attorney that he represents said consumer.
(4) Collecting, or attempting to collect, from a consumer a debt that is barred by a statute of limitations or is otherwise unrecoverable as a matter of law without fully informing the consumer that the debt is barred by a statute of limitations or is otherwise unrecoverable as a matter of law.
(5) Failing to comply with Part 5 of this Article.
(6) Filing or threatening to file a lawsuit or initiating or threatening to initiate an arbitration proceeding that is barred by a statute of limitations or is otherwise unrecoverable as a matter of law."

SECTION 3. G.S. 58-70-130 reads as rewritten:

"**§ 58-70-130. Civil liability.**

(a) Any collection agency which violates Part 3 of this ~~Article~~ or G.S. 58-70-70(b) with respect to any debtor shall be liable to that debtor in an amount equal to the sum of any actual damages sustained by the debtor as a result of the violation.

(b) Any collection agency which violates Part 3 of this ~~Article~~ or G.S. 58-70-70(b) with respect to any debtor shall, in addition to actual damages sustained by the debtor as a result of the violation, also be liable to the ~~debtor only in an individual action, and its additional liability therein to that debtor shall be~~debtor for a penalty in such amount as the court may allow, which shall not be less than ~~one hundred dollars ($100.00)~~five hundred dollars ($500) for each

violation nor greater than ~~two thousand dollars ($2,000)~~ four thousand dollars ($4,000) for each violation.

(c) The specific and general provisions of Part 3 of this ~~Article~~ or G.S. 58-70-70(b) shall constitute unfair or deceptive acts or practices proscribed herein or by G.S. 75-1.1 in the area of commerce regulated ~~thereby.~~ thereby; provided, however, that notwithstanding the provisions of G.S. 75-16, the civil penalties provided in this section shall not be trebled. ~~Notwithstanding the provisions of G.S. 75-15.2 and 75-16, civil~~Civil penalties in excess of ~~two thousand dollars ($2,000)~~four thousand dollars ($4,000) for each violation shall not be ~~imposed, nor shall damages be trebled for any violation under Part 3 of this Article.~~imposed.

(d) The remedies provided by this section shall be cumulative, and in addition to remedies otherwise available. ~~Provided, that any~~Any punitive damages assessed against a collection agency shall not be reduced by the amount of the civil penalty assessed against such agency pursuant to subsection (b).

(e) The clear proceeds of civil penalties imposed under this section in suits instituted by the Attorney General shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 4. G.S. 6-21.2 reads as rewritten:

"§ 6-21.2. Attorneys' fees in notes, etc., in addition to interest.

Obligations to pay attorneys' fees upon any note, conditional sale contract or other evidence of indebtedness, in addition to the legal rate of interest or finance charges specified therein, shall be valid and enforceable, and collectible as part of such debt, if such note, contract or other evidence of indebtedness be collected by or through an attorney at law after maturity, subject to the following provisions:

(1) If such note, conditional sale contract or other evidence of indebtedness provides for attorneys' fees in some specific percentage of the "outstanding balance" as herein defined, such provision and obligation shall be valid and enforceable up to but not in excess of fifteen percent (15%) of said "outstanding balance" owing on said note, contract or other evidence of indebtedness.

(2) If such note, conditional sale contract or other evidence of indebtedness provides for the payment of reasonable attorneys' fees by the debtor, without specifying any specific percentage, such provision shall be construed to mean fifteen percent (15%) of the "outstanding balance" owing on said note, contract or other evidence of indebtedness.

(3) As to notes and other writing(s) evidencing an indebtedness arising out of a loan of money to the debtor, the "outstanding balance" shall mean the principal and interest owing at the time suit is instituted to enforce any security agreement securing payment of the debt and/or to collect said debt.

(4) As to conditional sale contracts and other such security agreements which evidence both a monetary obligation and a security interest in or a lease of specific goods, the "outstanding balance" shall mean the "time price balance" owing as of the time suit is instituted by the secured party to enforce the said security agreement and/or to collect said debt.

(5) The holder of an unsecured note or other writing(s) evidencing an unsecured debt, and/or the holder of a note and chattel mortgage or other security agreement and/or the holder of a conditional sale contract or any other such security agreement which evidences both a monetary obligation and a security interest in or a lease of specific goods, or his attorney at law, shall, after maturity of the obligation by default or otherwise, notify the maker, debtor, account debtor, endorser or party sought to be held on said obligation that the provisions relative to payment of attorneys' fees in addition to the

"outstanding balance" shall be enforced and that such maker, debtor, account debtor, endorser or party sought to be held on said obligation has five days from the mailing of such notice to pay the "outstanding balance" without the attorneys' fees. If such party shall pay the "outstanding balance" in full before the expiration of such time, then the obligation to pay the attorneys' fees shall be void, and no court shall enforce such provisions.

(6) If the attorneys' fees are for services rendered to an assignee or a debt buyer, as defined in G.S. 58-70-15, all of the following materials setting forth a party's obligation to pay attorneys' fees shall be provided to the court before a court may enforce those provisions:

a. A copy of the contract or other writing evidencing the original debt, which must contain a signature of the defendant. If a claim is based on credit card debt and no such signed writing evidencing the original debt ever existed, then copies of documents generated when the credit card was actually used must be attached.

b. A copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more than once, then each assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain the original account number of the debt purchased and must clearly show the debtor's name associated with that account number.

Notwithstanding the foregoing, however, if debtor has defaulted or violated the terms of the security agreement and has refused, on demand, to surrender possession of the collateral to the secured party as authorized by G.S. 25-9-609, with the result that said secured party is required to institute an ancillary claim and delivery proceeding to secure possession of said collateral; no such written notice shall be required before enforcement of the provisions relative to payment of attorneys' fees in addition to the outstanding balance."

SECTION 5. Article 70 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 5. Special Requirements in Actions Filed by Collection Agency Plaintiffs.

"**§ 58-70-145. Complaint of a collection agency plaintiff must contain certain allegations.**

In any cause of action that arises out of the conduct of a business for which a plaintiff must secure a permit pursuant to this Article, the complaint shall allege as part of the cause of action that the plaintiff is duly licensed under this Article and shall contain the name and number, if any, of the license and the governmental agency that issued it.

"**§ 58-70-150. Complaint of a debt buyer plaintiff must be accompanied by certain materials.**

In addition to the requirements of G.S. 58-70-145, in any cause of action initiated by a debt buyer, as that term is defined in G.S. 58-70-15, all of the following materials shall be attached to the complaint or claim:

(1) A copy of the contract or other writing evidencing the original debt, which must contain a signature of the defendant. If a claim is based on credit card debt and no such signed writing evidencing the original debt ever existed, then copies of documents generated when the credit card was actually used must be attached.

(2) A copy of the assignment or other writing establishing that the plaintiff is the owner of the debt. If the debt has been assigned more than once, then each

assignment or other writing evidencing transfer of ownership must be attached to establish an unbroken chain of ownership. Each assignment or other writing evidencing transfer of ownership must contain the original account number of the debt purchased and must clearly show the debtor's name associated with that account number.

"**§ 58-70-155. Prerequisites to entering a default or summary judgment against a debtor under this Part.**

(a) Prior to entry of a default judgment or summary judgment against a debtor in a complaint initiated by a debt buyer, the plaintiff shall file evidence with the court to establish the amount and nature of the debt.

(b) The only evidence sufficient to establish the amount and nature of the debt shall be properly authenticated business records that satisfy the requirements of Rule 803(b) of the North Carolina Rules of Evidence. The authenticated business records shall include at least all of the following items:

(1) The original account number.
(2) The original creditor.
(3) The amount of the original debt.
(4) An itemization of charges and fees claimed to be owed.
(5) The original charge-off balance, or, if the balance has not been charged off, an explanation of how the balance was calculated.
(6) An itemization of post charge-off additions, where applicable.
(7) The date of last payment.
(8) The amount of interest claimed and the basis for the interest charged."

SECTION 6. G.S. 75-56 reads as rewritten:

"**§ 75-56. Application.**

(a) The specific and general provisions of this Article shall exclusively constitute the unfair or deceptive acts or practices proscribed by G.S. 75-1.1 in the area of commerce regulated by this Article.

(b) Any debt collector who fails to comply with any provision of this Article with respect to any person is liable to such person in a private action in amount equal to the sum of (i) any actual damage sustained by such person as a result of such failure; and (ii) civil penalties the court may allow, but not less than five hundred dollars ($500) nor greater than four thousand dollars ($4,000) for each violation.

(c) The remedies provided by this section shall be cumulative, and in addition to remedies otherwise available. Any punitive damages assessed against a debt collector shall not be reduced by the amount of the civil penalty assessed against such debt collector pursuant to subsection (d).

(d) Notwithstanding the provisions of G.S. 75-15.2 and G.S. 75-16, in private actions or actions instituted by the Attorney General, civil penalties in excess of ~~two thousand dollars ($2,000)~~four thousand dollars ($4,000) shall not be ~~imposed, nor shall damages be trebled for any violation under this Article.~~ imposed.

(e) The clear proceeds of civil penalties imposed in actions instituted by the Attorney General shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 7. Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-57. Receipt requirement.**

Whenever a payment is received from a debtor, forwardee, or other person, an original receipt or an exact copy thereof shall be furnished the individual from whom payment is received. Evidence of all receipts issued shall be kept for three years. All receipts issued must:

(1) Show the name of the creditor or creditors for whom collected, the account number assigned by the creditor or creditors for whom collected, and if the current creditor is not the original creditor, the account number assigned by the original creditor.

(2) Show the amount and date paid.

(3) Show the last name of the person accepting payment.

(4) State clearly whether the payment is accepted as either payment in full or as a full and final compromise of the debt, and if not, the receipt shall state clearly the balance due after payment is credited."

SECTION 8. This act becomes effective October 1, 2009, and applies to violations that occur on or after that date.

SENATE BILL 954:
Protections from Abusive Debt Buyers

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 29, 2009
Introduced by:	Sen. Nesbitt	**Prepared by:**	Giles S. Perry
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 954 enacts new restrictions relating to the actions of debt buyers, and increases the civil liability of collection agencies and debt collectors who violate the provisions of State law regulating their actions.***

[As introduced, this bill was identical to H1059, as introduced by Reps. Blue, Harrison, which is currently in House Financial Institutions, if favorable, Judiciary II.]

CURRENT LAW & BILL ANALYSIS

"Debt buyer" included in definition of collection agency/licensure required.

Section 1 of the bill includes "debt buyer" in the definition of collection agencies in Article 70 of Chapter 58 of the General Statutes, which requires licensure and regulates the actions of collection agencies.

A "debt buyer" is defined as a "person or entity that purchases delinquent or charged-off consumer loans, receivables, or other delinquent consumer debt, including debts involving bankruptcy, whether it collects the debt itself or hires a third party for collection or an attorney-at-law for litigation in order to collect such debt."

Debt buyers/collection agencies receipt to creditor.

Section 1A of the bill expands the requirements of current law that a collection agency provide a receipt to a creditor when a cash payment is received to require, in the case of debt buyers only, that the receipt:

- show the account number assigned by the creditor or creditors for whom collected, and if the current creditor is not the original creditor, the account number assigned by the original creditor.
- state clearly whether the payment is accepted as either payment in full or as a full and final compromise of the debt, and if not, the receipt shall state clearly the balance due after payment is credited.

Expansion of definition of "unconscionable means" of debt collection

Section 2 of the bill amends the statutory definition of "unconscionable means" of debt collection by collection agencies to specify: that the prohibited unconscionable means of collection apply to both collection agencies and third parties acting on behalf of collection agencies; and that a third party's use of an unconscionable mean may be attributed to the collection agency of behalf of whom the third party acts.

In addition, this section adds three new prohibited "unconscionable means" of collection:

- collecting, or attempting to collect, from a consumer a debt that is barred by a statute of limitations or is otherwise unrecoverable as a matter of law without fully informing the consumer that the debt is barred by a statute of limitations or is otherwise unrecoverable as a matter of law.
- failing to comply with Part 5 of Article 70 of Chapter 58 of the General Statutes, which requires specific identifying information in actions filed by collections agencies.

- filing or threatening to file a lawsuit or initiating or threatening to initiate an arbitration proceeding that is barred by a statute of limitations or is otherwise unrecoverable as a matter of law.

Increase in penalties to the debtor and civil penalties of collection agencies for prohibited acts

Section 3 of the bill increases the penalties to the debtor and the civil penalties that may be imposed on collection agencies that violate the prohibitions on specified debt collection practices set out in Chapter 58 of the General Statutes. Specifically, this section increases the penalty to the debtor that may be imposed from the current $100-$2000 to $500-$4000, for each violation, and increases the civil penalty for each violation from up to $2000 to up to $4000. Section 3 also expands the violations that could be subject to penalties to the debtor and civil penalties to include violations of the debt buyer receipt requirements of G.S. 58-70-70(b).

Attorneys' fees for services rendered to debt buyer

Section 4 of the bill amends the provisions of Chapter 6 of the General Statutes governing obligations to pay attorneys' fees in notes, conditional sales contracts, or other evidence of indebtedness. The bill changes the current law to provide that if attorneys' fees are for services rendered to a debt buyer, evidence of the contact evidencing the original debt, a copy of the document establishing that they are the owner of the debt, and specified evidence establishing the amount and nature of the debt must be provided to the court.

Requirements in actions filed by collection agency plaintiffs

Section 5 of the bill adds a new Part 5 to Article 70 of Chapter 58 of the General Statutes governing actions filed by collection agency plaintiffs. This new Part: requires collection agencies, in any cause of action they undertake, to show they are licensed; requires debt buyers to attach to any complaint or claim they initiate evidence of the contact evidencing the original debt, and a copy of the document establishing that they are the owner of the debt; and requires debt buyers to file specified evidence with the court to establish the amount and nature of the debt.

Increase in penalties to the debtor and civil penalties of debt collectors for prohibited acts

Section 6 of the bill increases the penalties to the debtor and civil penalties that may be imposed on debt collectors who violate the prohibitions on specified debt collection practices set out under Article 2 of Chapter 75 regulating debt collectors. Specifically, this section increases the penalties to the debtor that may be imposed on the debt collector from the current $100-$2000 to $500-$4000 for each violation; increases the civil penalty for each violation from up to $2000 to up to $4000

Debt collector receipt to creditors

Section 7 of the bill adds a new requirement for debt collectors to provide a receipt to a creditor when a a payment is received This section requires that evidence of receipts must be kept for three years, and the receipt must include: the name of the creditor or creditors for whom collected; the account number assigned by the creditor or creditors for whom collected; if the current creditor is not the original creditor, the account number assigned by the original creditor; the amount and date paid; the last name of the person accepting payment; whether the payment is accepted as either payment in full or as a full and final compromise of the debt, and if not, state clearly the balance due after payment is credited

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to offenses that occur on or after that date.

BACKGROUND:

The proposed committee substitute includes provisions similar to Senate Bill 965, Civil Liability/Prohibited Debt Collection.

S954-SMRW-88(e1) v5

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 955

Short Title:	Bicycle Lights at Night.	(Public)
Sponsors:	Senator Nesbitt.	
Referred to:	Judiciary I.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE BICYCLES TO HAVE VISIBLE LIGHTS ON THE FRONT AND REAR OF THE BICYCLE WHEN OPERATED AT NIGHT ON A STREET OR HIGHWAY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-129(e) reads as rewritten:

"(e) Lamps on Bicycles. – Every bicycle shall be equipped with a lighted lamp on the front thereof, visible under normal atmospheric conditions from a distance of at least 300 feet in front of such bicycle, and shall also be equipped with a ~~reflex mirror or~~ lamp on the rear, exhibiting a red light visible under like conditions from a distance of at least 200 feet to the rear of such bicycle, when ~~used at night.~~ in operation on a street or highway."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 955
PROPOSED COMMITTEE SUBSTITUTE S955-CSRW-26 [v.1]

4/24/2009 10:59:51 AM

Short Title: Bicycle Lights at Night. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE BICYCLES TO HAVE VISIBLE LIGHTS ON THE FRONT AND REAR OF THE BICYCLE WHEN OPERATED AT NIGHT ON A STREET OR HIGHWAY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-129(e) reads as rewritten:

"(e) Lamps on Bicycles. – Every bicycle shall be equipped with a lighted lamp on the front thereof, visible under normal atmospheric conditions from a distance of at least 300 feet in front of such bicycle, and shall also be equipped with a ~~reflex mirror or~~ lamp on the rear, exhibiting a red light visible under like conditions from a distance of at least 200 feet to the rear of such bicycle, when ~~used at night.~~in operation at night on a street or highway."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **Attachment 6**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 955 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Soles
)
Sen.) _____

1 moves to amend the bill on page (, line 11

2 ( ) WHICH CHANGES THE TITLE

3 by adding:

4 "or other public vehicular area."

5 _____

6 _____

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12 _____

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15 _____

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17 _____

18 _____

19 _____

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 984

Short Title:	Access to Juvenile Records/Violent Offenders.	(Public)
Sponsors:	Senators McKissick; Berger of Rockingham, Clary, Hunt, and Rand.	
Referred to:	Judiciary I.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE JUVENILE CODE REGARDING ACCESS TO AND USE OF JUVENILE COURT RECORDS WHEN THE INDIVIDUAL IS LATER CHARGED AS AN ADULT IN A CRIMINAL PROCEEDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1501 is amended by adding the following new subdivision to read:

"In this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings. The singular includes the plural, unless otherwise specified.

...

(18b) Juvenile record sheet. – A list of a juvenile's adjudications of delinquency occurring within 18 months after the juvenile is 16 years of age for an offense that would be a Class A-1 misdemeanor or a felony if committed by an adult. The list shall include only:

a. The name of the county and the juvenile file number;
b. The juvenile's name and date of birth;
c. The dates of the adjudications;
d. The offenses for which the juvenile was adjudicated delinquent; and
e. The dates the adjudicated offenses were committed.

...."

SECTION 2. G.S. 7B-1501(23) reads as rewritten:

"In this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings. The singular includes the plural, unless otherwise specified.

...

(23) Prosecutor. – The district attorney or an assistant district ~~attorney assigned by the district attorney to juvenile proceedings.~~attorney.

...."

SECTION 3. G.S. 7B-3000 reads as rewritten:

"**§ 7B-3000. Juvenile court records.**

(a) The clerk shall maintain a complete record of all juvenile cases filed in the clerk's office to be known as the juvenile record. The record shall include the summons and petition, any secure or nonsecure custody order, any electronic or mechanical recording of hearings, a juvenile record sheet, and any written motions, orders, or papers filed in the proceeding.

(b) All juvenile records shall be withheld from public inspection and, except as provided in this ~~subsection,~~section, may be examined only by order of the court. Except as provided in subsection (c) of this section, the following persons may examine the juvenile's record and obtain copies of written parts of the record without an order of the court:

(1) The juvenile;
(2) The juvenile's parent, guardian, or custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;
(3) The prosecutor; and
(4) Court counselors.

Except as provided in subsection (c) of this section, the prosecutor may, in the prosecutor's discretion, share information obtained from a juvenile's record with law enforcement officers sworn in this State, but may not allow a law enforcement officer to photocopy any part of the record.

(b1) In addition to persons listed in subsection (b) of this section, magistrates and law enforcement officers sworn in this State may obtain copies of a juvenile's record sheet, without a court order, for purposes authorized by G.S. 7B-3002.

(c) The court may direct the clerk to "seal" any portion of a juvenile's record. The clerk shall secure any sealed portion of a juvenile's record in an envelope clearly marked "SEALED: MAY BE EXAMINED ONLY BY ORDER OF THE COURT", or with similar notice, and shall permit examination or copying of sealed portions of a juvenile's record only pursuant to a court order specifically authorizing inspection or copying.

(d) Any portion of a juvenile's record consisting of an electronic or mechanical recording of a hearing shall be transcribed only when notice of appeal has been timely given and shall be copied electronically or mechanically, only by order of the court. After the time for appeal has expired with no appeal having been filed, the court may enter a written order directing the clerk to destroy the recording of the hearing.

~~(e) The juvenile's record of an adjudication of delinquency for an offense that would be a felony if committed by an adult may be used by law enforcement, the magistrate, and the prosecutor for pretrial release and plea negotiating decisions.~~

~~(f) The juvenile's record of an adjudication of delinquency for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be used in a subsequent criminal proceeding against the juvenile either under G.S. 8C-1, Rule 404(b), or to prove an aggravating factor at sentencing under G.S. 15A-1340.4(a), 15A-1340.16(d), or 15A-2000(e). The record may be so used only by order of the court in the subsequent criminal proceeding, upon motion of the prosecutor, after an in-camera hearing to determine whether the record in question is admissible.~~

(g) Except as provided in subsection (d) of this section, a juvenile's record shall be destroyed only as authorized by G.S. 7B-3200 or by rules adopted by the Administrative Office of the Courts."

SECTION 4. G.S. 7B-3001 reads as rewritten:

"**§ 7B-3001. Other records relating to juveniles.**

(a) The chief court counselor shall maintain a record of all cases of juveniles under supervision of juvenile court counselors, to be known as the juvenile court counselor's record. The juvenile court counselor's record shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile's family; probation reports; interviews with the juvenile's family; or other information the court finds should be protected from public inspection in the best interests of the juvenile.

(b) Unless jurisdiction of the juvenile has been transferred to superior court, all law enforcement records and files concerning a juvenile shall be kept separate from the records and files of adults and shall be withheld from public inspection. The following persons may examine and obtain copies of law enforcement records and files concerning a juvenile without an order of the court:

(1) The juvenile;
(2) The juvenile's parent, guardian, custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;

(3) The ~~district attorney or~~ prosecutor;
(4) Juvenile court counselors; and
(5) Law enforcement officers sworn in this State.

Otherwise, the records and files may be examined or copied only by order of the court.

(c) All records and files maintained by the Department pursuant to this Chapter shall be withheld from public inspection. The following persons may examine and obtain copies of the Department records and files concerning a juvenile without an order of the court:

(1) The juvenile and the juvenile's attorney;
(2) The juvenile's parent, guardian, custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;
(3) Professionals in the agency who are directly involved in the juvenile's case; and
(4) Juvenile court counselors.

After a complaint has been approved for filing as a petition, the juvenile court counselor may share with the prosecutor any records or information the prosecutor deems necessary to represent the State at any stage of the delinquency proceeding. Otherwise, the records and files may be examined or copied only by order of the court. The court may inspect and order the release of records maintained by the Department."

SECTION 5. Article 30 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"**§ 7B-3002. Use of juvenile court records in certain criminal proceedings.**

(a) Notwithstanding any other provision of law, a juvenile's record sheet and the information contained in the record sheet may be used by law enforcement, the magistrate, the courts, and the prosecutor for pretrial release, plea negotiating decisions, and plea acceptance decisions, in a criminal proceeding involving a Class A-1 misdemeanor or a felony.

(b) The juvenile's record of an adjudication of delinquency for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be used in a subsequent criminal proceeding against the juvenile either under G.S. 8C-1, Rule 404(b), or to prove an aggravating factor at sentencing under G.S. 15A-1340.16(d) or G.S. 15A-2000(e). The record may be so used only by order of the court in the subsequent criminal proceeding, upon motion of the prosecutor, after an in camera hearing to determine whether the record in question is admissible."

SECTION 6. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 984
PROPOSED COMMITTEE SUBSTITUTE S984-PCS55374-SA-23

Short Title: Access to Juvenile Records/Violent Offenders. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE JUVENILE CODE REGARDING ACCESS TO AND USE OF JUVENILE COURT RECORDS WHEN THE INDIVIDUAL IS LATER CHARGED AS AN ADULT IN A CRIMINAL PROCEEDING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1501 is amended by adding the following new subdivision to read:

"In this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings. The singular includes the plural, unless otherwise specified.

...

(18b) Juvenile record sheet. – A list of a juvenile's adjudications of delinquency for any offense that would be a Class A1 misdemeanor or a felony if committed by an adult. The list shall include only:

a. Adjudications that occurred 18 months or less before the juvenile reached 16 years of age and adjudications that occurred after the juvenile reached 16 years of age.
b. The name of the county and the juvenile file number.
c. The juvenile's name and date of birth.
d. The dates of the adjudications.
e. The offenses for which the juvenile was adjudicated delinquent.
f. The dates the adjudicated offenses were committed.

...."

SECTION 2. G.S. 7B-1501(23) reads as rewritten:

"In this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings. The singular includes the plural, unless otherwise specified.

...

(23) Prosecutor. – The district attorney or an assistant district ~~attorney assigned by the district attorney to juvenile proceedings~~.attorney.

...."

SECTION 3. G.S. 7B-3000 reads as rewritten:

"**§ 7B-3000. Juvenile court records.**

(a) The clerk shall maintain a complete record of all juvenile cases filed in the clerk's office to be known as the juvenile record. The record shall include the summons and petition,

any secure or nonsecure custody order, any electronic or mechanical recording of hearings, a juvenile record sheet, and any written motions, orders, or papers filed in the proceeding.

(b) All juvenile records shall be withheld from public inspection and, except as provided in this ~~subsection,~~section, may be examined only by order of the court. Except as provided in subsection (c) of this section, the following persons may examine the juvenile's record and obtain copies of written parts of the record without an order of the court:

(1) The juvenile;

(2) The juvenile's parent, guardian, or custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;

(3) The prosecutor; and

(4) Court counselors.

Except as provided in subsection (c) of this section, the prosecutor may, in the prosecutor's discretion, share information obtained from a juvenile's record with law enforcement officers sworn in this State, but may not allow a law enforcement officer to photocopy any part of the record.

(b1) In addition to persons listed in subsection (b) of this section, magistrates and law enforcement officers sworn in this State may obtain copies of a juvenile record sheet, without a court order, for use as authorized by G.S. 7B-3002(a). Any juvenile record sheet obtained pursuant to this subsection shall continue to be withheld from public inspection and shall not become part of the public record in any criminal proceeding.

(c) The court may direct the clerk to "seal" any portion of a juvenile's record. The clerk shall secure any sealed portion of a juvenile's record in an envelope clearly marked "SEALED: MAY BE EXAMINED ONLY BY ORDER OF THE COURT", or with similar notice, and shall permit examination or copying of sealed portions of a juvenile's record only pursuant to a court order specifically authorizing inspection or copying.

(d) Any portion of a juvenile's record consisting of an electronic or mechanical recording of a hearing shall be transcribed only when notice of appeal has been timely given and shall be copied electronically or mechanically, only by order of the court. After the time for appeal has expired with no appeal having been filed, the court may enter a written order directing the clerk to destroy the recording of the hearing.

~~(e) The juvenile's record of an adjudication of delinquency for an offense that would be a felony if committed by an adult may be used by law enforcement, the magistrate, and the prosecutor for pretrial release and plea negotiating decisions.~~

~~(f) The juvenile's record of an adjudication of delinquency for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be used in a subsequent criminal proceeding against the juvenile either under G.S. 8C-1, Rule 404(b), or to prove an aggravating factor at sentencing under G.S. 15A-1340.4(a), 15A-1340.16(d), or 15A-2000(e). The record may be so used only by order of the court in the subsequent criminal proceeding, upon motion of the prosecutor, after an in camera hearing to determine whether the record in question is admissible.~~

(g) Except as provided in subsection (d) of this section, a juvenile's record shall be destroyed only as authorized by G.S. 7B-3200 or by rules adopted by the Administrative Office of the Courts."

SECTION 4. G.S. 7B-3001 reads as rewritten:

"**§ 7B-3001. Other records relating to juveniles.**

(a) The chief court counselor shall maintain a record of all cases of juveniles under supervision of juvenile court counselors, to be known as the juvenile court counselor's record. The juvenile court counselor's record shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile's family; probation reports; interviews with the juvenile's family; or other information the court finds should be protected from public inspection in the best interests of the juvenile.

(b) Unless jurisdiction of the juvenile has been transferred to superior court, all law enforcement records and files concerning a juvenile shall be kept separate from the records and files of adults and shall be withheld from public inspection. The following persons may examine and obtain copies of law enforcement records and files concerning a juvenile without an order of the court:

(1) The juvenile;

(2) The juvenile's parent, guardian, custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;

(3) The ~~district attorney or~~ prosecutor;

(4) Juvenile court counselors; and

(5) Law enforcement officers sworn in this State.

Otherwise, the records and files may be examined or copied only by order of the court.

(c) All records and files maintained by the Department pursuant to this Chapter shall be withheld from public inspection. The following persons may examine and obtain copies of the Department records and files concerning a juvenile without an order of the court:

(1) The juvenile and the juvenile's attorney;

(2) The juvenile's parent, guardian, custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;

(3) Professionals in the agency who are directly involved in the juvenile's case; and

(4) Juvenile court counselors.

Otherwise, the records and files may be examined or copied only by order of the court. The court may inspect and order the release of records maintained by the Department."

SECTION 5. Article 30 of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"**§ 7B-3002. Use of juvenile court records in certain criminal proceedings.**

(a) Notwithstanding any other provision of law, if the defendant in a criminal proceeding involving a Class A1 misdemeanor or a felony was less than 21 years of age at the time of the offense, a juvenile record sheet and the information contained in the record sheet may be used by law enforcement, the magistrate, the courts, and the prosecutor for pretrial release, plea negotiating decisions, and plea acceptance decisions.

(b) The juvenile's record of an adjudication of delinquency for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be used in a subsequent criminal proceeding against the juvenile either under Rule 404(b) of the North Carolina Rules of Evidence, as contained in G.S. 8C-1 or to prove an aggravating factor at sentencing under G.S. 15A-1340.16(d) or G.S. 15A-2000(e). The record may be so used only by order of the court in the subsequent criminal proceeding, upon motion of the prosecutor, after an in camera hearing to determine whether the record in question is admissible."

SECTION 6. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date. The juvenile record sheets created in Section 1 of this act shall contain adjudications of delinquency occurring prior to the effective date of this act; however, the juvenile record sheets may only be accessed and used pursuant to this act for offenses committed on or after December 1, 2009.

SENATE BILL 984:
Access to Juvenile Records/Violent Offenders

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 29, 2009
Introduced by:	Sen. McKissick	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S984-CSSA-23		

SUMMARY: ***The proposed committee substitute for Senate Bill 984 amends the juvenile code regarding access to and use of juvenile court records when the individual is later charged as an adult in a criminal proceeding.***

BILL ANALYSIS: **Section 1** amends G.S. 7B-1501 to add a new definition of "juvenile record sheet". The juvenile record sheet will contain a list of adjudications of delinquency for any offense that would be a Class A1 misdemeanor or a felony if committed by an adult. The list shall include only:

- Adjudications that occurred 18 months or less before the juvenile reached 16 and adjudications that occurred after the juvenile reached 16.
- The name of the county and the juvenile file number.
- The juvenile's name and date of birth.
- The dates of the adjudications.
- The offenses for which the juvenile was adjudicated delinquent.
- The dates the adjudicated offenses were committed.

Section 2 amends the definition of the term "prosecutor" in G.S. 7B-1501 to include the district attorney or an assistant district attorney.

Section 3 amends G.S. 7B-3000 to authorize magistrates and law enforcement officers to obtain copies of a juvenile's record sheet without a court order, for purposes authorized by G.S. 7B-3002(a) and makes conforming changes to that statute. Any juvenile record sheet obtained under this subsection shall continue to be withheld from public inspection and shall not become part of the public record in any criminal proceeding.

Section 4 amends G.S. 7B-3001 to authorize the juvenile court counselor, after a complaint has been approved for filing as a petition, to share with the prosecutor any records or information the prosecutor deems necessary to represent the State at any stage of the delinquency proceeding.

Section 5 creates a new G.S. 7B-3002. Subsection (a) authorizes law enforcement, magistrates, the courts, and the prosecutor, to use a juvenile's record sheet for pretrial release, plea negotiating decisions, and plea acceptance decisions in a criminal proceeding for a Class A1 misdemeanor or a felony. Subsection (b) restates language that was deleted in G.S. 7B-3000(f) authorizing the use of a juvenile's delinquency record for certain purposes under the rules of evidence or to prove an aggravating factor at sentencing.

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to offenses committed on or after that date. The juvenile record sheets created in Section 1 of this act shall contain adjudications of delinquency occurring prior to the effective date of this act; however, the juvenile record sheets may only be accessed and used pursuant to this act for offenses committed on or after December 1, 2009.

S984-SMSA-63(CSSA-23) v2

Attachment 10

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5/7

S. B. No. 984 Amendment No. 1

COMMITTEE SUBSTITUTE ✓ (to be filled in by Principal Clerk)

Rep.) Kinnaird
Sen.)

moves to amend the bill on page 2, line 16-17

( ) WHICH CHANGES THE TITLE

by deleting the phrase "~~many~~ section, magistrates and law enforcement officers sworn in this State' and substituting the phrase "section and magistrates";

and on page 3, line 30 by deleting the phrase "law enforcement,".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 56

Short Title:	Assistance to Voters.	(Public)
Sponsors:	Senator Soles.	
Referred to:	Judiciary I.	

February 4, 2009

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE RIGHT OF VOTERS TO RECEIVE ASSISTANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-166.8 reads as rewritten:

"**§ 163-166.8. Assistance to voters.**

(a) Any registered voter qualified to vote in the election shall be entitled to assistance with entering and exiting the voting booth and in preparing ballots ~~in accordance with the following rules:~~

~~(1) Any voter is entitled to assistance from the voter's spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild, as chosen by the voter.~~

~~(2)~~ ~~A voter in any of the following four categories is entitled to assistance~~ from a person of the voter's choice, other than the voter's employer or agent of that employer or an officer or agent of the voter's ~~union:~~union.

~~a. A voter who, on account of physical disability, is unable to enter the voting booth without assistance.~~

~~b. A voter who, on account of physical disability, is unable to mark a ballot without assistance.~~

~~c. A voter who, on account of illiteracy, is unable to mark a ballot without assistance.~~

~~d. A voter who, on account of blindness, is unable to enter the voting booth or mark a ballot without assistance.~~

(b) A qualified voter seeking assistance in an election shall, upon arriving at the voting place, request permission from the chief judge to have ~~assistance, stating the reasons.~~ assistance. If the chief judge determines that such assistance is appropriate, the chief judge shall ask the voter to point out and identify the person the voter desires to provide such assistance. If the identified person meets the criteria in subsection (a) of this section, the chief judge shall request the person indicated to render the assistance. The chief judge, one of the judges, or one of the assistants may provide aid to the voter if so requested, if the election official is not prohibited by subdivision (a) (2) of this section. Under no circumstances shall any precinct official be assigned to assist a voter qualified for assistance, who was not specified by the voter.

(c) A person rendering assistance to a voter in an election shall be admitted to the voting booth with the voter being assisted. The State Board of Elections shall promulgate rules governing voter assistance, and those rules shall adhere to the following guidelines:

(1) The person rendering assistance shall not in any manner seek to persuade or induce any voter to cast any vote in any particular way.

(2) The person rendering assistance shall not make or keep any memorandum of anything which occurs within the voting booth.

(3) The person rendering assistance shall not, directly or indirectly, reveal to any person how the assisted voter marked ballots, unless the person rendering assistance is called upon to testify in a judicial proceeding for a violation of the election laws."

SECTION 2. This act becomes effective January 1, 2010.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 56
PROPOSED COMMITTEE SUBSTITUTE S56-PCS75251-LL-22

Short Title: District Court District 13 Residency. (Public)

Sponsors:

Referred to:

February 4, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW PROVIDING BALANCE AMONG THE COUNTIES IN THE RESIDENCY OF DISTRICT COURT JUDGES IN DISTRICT COURT DISTRICT 13.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-133(b2) reads as rewritten:

"(b2) The qualified voters of District Court District 13 shall elect all six judges established for the District in subsection (a) of this section, but only persons who reside in Bladen County may be candidates for one of those judgeships, only persons who reside in Columbus County may be candidates for ~~one~~ two of those judgeships, and only persons who reside in Brunswick County may be candidates for ~~two~~ three of those judgeships. ~~The district court judgeship established for residents of Bladen County by this subsection shall be the judgeship currently held by Judge Phillips, who resides in Bladen County. The district court judgeship established for residents of Columbus County by this subsection shall be the judgeship currently held by Judge Jolly, who resides in Columbus County. The district court judgeships established for residents of Brunswick County by this subsection shall be the judgeships currently held by Judge Barefoot and Judge Warren, who reside in Brunswick County. Those judges' successors shall be elected for four year terms in the 2008 general election. Candidates for the remaining judgeships in District 13 may be residents of any county within the district.~~ These district court judgeships shall be numbered and assigned for residency purposes as follows:

(1) Seat number one, established for residents of Brunswick County by this section, shall be the seat currently held by Judge Barefoot.

(2) Seat number two, established for residents of Brunswick County by this section, shall be the seat currently held by Judge Fairley.

(3) Seat number three, established for residents of Brunswick County by this section, shall be the seat currently held by Judge Warren.

(4) Seat number four, established for residents of Columbus County by this section, shall be the seat currently held by Judge Jolly.

(5) Seat number five, established for residents of Columbus County by this section, shall be the seat currently held by Judge Tyler.

(6) Seat number six, established for residents of Bladen County by this section, shall be the seat currently held by Judge Ussery."

SECTION 2. This act becomes effective on the date upon which Section 1 of this act is approved under section 5 of the Voting Rights Act of 1965.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 713

Short Title:	Removal of Electronic Monitoring Device.	(Public)
Sponsors:	Senators Rucho, Clodfelter; Dannelly, and Goodall.	
Referred to:	Judiciary I.	

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 home 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.

(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 is a Class E felony."

SECTION 2. This act becomes effective December 1, 2009, and applies to acts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 713
PROPOSED COMMITTEE SUBSTITUTE S713-PCS15262-SA-13

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 A1 misdemeanor. Violation of this section by any other person is a Class A1 misdemeanor."

SECTION 2. This act becomes effective December 1, 2009, and applies to acts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 713
PROPOSED COMMITTEE SUBSTITUTE S713-CSSA-13 [v.2]

4/16/2009 4:43:44 PM

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; or

(4) Wearing an electronic monitoring device as a condition of parole.

(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.

~~(c) Violation of this section is a Class E felony.~~"

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:	Senate Judiciary I	**Date:**	May 6, 2009
Introduced by:	Sen. Rucho	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S713-CSSA-13		

SUMMARY: ***The proposed committee substitute for Senate Bill 713 creates a criminal offense of removing, destroying, or circumventing the operation of an electronic monitoring device.***

[As introduced, this bill was identical to H836, as introduced by Rep. Tillis, which is currently in House Ways and Means/Broadband Connectivity.]

BILL ANALYSIS: The proposed committee substitute for Senate Bill 713 creates a Class E felony for any person who knowingly and without authority removes, destroys, or circumvents the operation of an electronic monitoring device or requests or solicits another person do so, if the electronic monitoring device is being used for house arrest, as a condition of bond or pretrial release, as a condition of probation, or as a condition of parole.

This offense does not apply to a juvenile, being monitored by an electronic monitoring device by the juvenile court.

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT Attachment 17

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 763 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) Stein

moves to amend the bill on page 1, line 8

( ) WHICH CHANGES THE TITLE

by deleting "operating" and substituting "tax exempt under";

and on page 1, line 14 by inserting the following between "Carolina" and "to":

"for the purposes for which it was organized".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 622

Short Title:	Undertaking to Stay Money Judgment.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A COURT TO DETERMINE, AFTER NOTICE AND HEARING, WHETHER THE AMOUNT OF UNDERTAKING TO STAY EXECUTION ON A MONEY JUDGMENT PENDING APPEAL IS PROPER AND REASONABLE BASED ON THE CONSIDERATION OF CERTAIN SPECIFIC RELEVANT FACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-289 reads as rewritten:

"**§ 1-289. Undertaking to stay execution on money judgment.**

(a) General Rule. – If the appeal is from a judgment directing the payment of money, it does not stay the execution of the judgment unless a written undertaking is executed on the part of the appellant, by one or more sureties, to the effect that if the judgment appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal, except as provided in ~~subsection (b)~~ subsection (a1) of this section. Whenever it is satisfactorily made to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file and serve a new undertaking, as above. In case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring it, the appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a party to an action or proceeding to give a bond or an undertaking with surety or sureties, ~~he~~ the party may, in lieu thereof, deposit with the officer into court money to the amount of the bond or undertaking to be given. The court in which the action or proceeding is pending may direct what disposition shall be made of such money pending the action or proceeding. In a case where, by this section, the money is to be deposited with an officer, a judge of the court, upon the application of either party, may, at any time before the deposit is made, order the money deposited in court instead of with the officer; and a deposit made pursuant to such order is of the same effect as if made with the officer. The perfecting of an appeal by giving the undertaking mentioned in this section stays proceedings in the court below upon the judgment appealed from; except when the sale of perishable property is directed, the court below may order the property to be sold and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court.

(a1) Undertaking Limited in Discretion of Court. – Except as provided in subsection (c) of this section, if the court determines that the interest of an appellant to appeal will be unreasonably burdened by the requirement in subsection (a) of this section to make an undertaking in the full amount of the judgment, the court may set a lesser amount for the undertaking. After notice and hearing, the court shall determine what lesser amount is proper

and reasonable for the security of the rights of the appellee, considering relevant factors including the following:

(1) The amount of the judgment.

(2) The amount of the limits of all applicable liability policies of the appellant for which the insurer has released all reservations of right or the right to deny coverage.

(3) The aggregate net worth of the appellant.

~~(b) If the appellee in a civil action brought under any legal theory obtains a judgment directing the payment or expenditure of money in the amount of twenty five million dollars ($25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the period of time during which the appellant has the right to pursue appellate review, including discretionary review and certiorari, the amount of the undertaking that the appellant is required to execute to stay execution of the judgment during the entire period of the appeal shall be twenty five million dollars ($25,000,000).~~

(c) Full Amount If Assets in Jeopardy. – If the appellee proves by a preponderance of the evidence that the appellant for whom the undertaking has been limited under ~~subsection (b)~~subsection (a1) of this section is, for the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina or the federal courts of the United States other than in the ordinary course of business, then the ~~limitation~~ limitations in ~~subsection (b)~~subsection (a1) of this section shall not apply and the appellant shall be required to make an undertaking in the full amount of the judgment ~~otherwise~~ required by subsection (a) of this section."

SECTION 2. This act becomes effective October 1, 2009, and applies to actions filed on or after that date.

SENATE BILL 622:
Undertaking to Stay Money Judgment

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 6, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 622 would authorize the court to permit an undertaking for less than the full amount of a judgment if the court determines the full amount would unreasonably burden the appellant.***

CURRENT LAW: Currently, judgment debtors are allowed to post a bond in North Carolina to stay enforcement of a judgment directing the payment of money pending an appeal of that judgment. The appellant (judgment debtor) must execute a written undertaking, by one or more sureties, to the effect that that the appellant will pay the judgment if it is affirmed.

A judgment debtor may appeal a civil judgment. The trial court may issue a stay of the enforcement of a judgment pending appeal provided that a bond in an amount equal to the amount of judgment is posted. Bonds to stay enforcement of a North Carolina judgment are limited to a maximum amount of $25 million. The limitation of the bond for punitive damages is not applicable if the judgment creditor proves by the preponderance of the evidence that the judgment debtor, for the purpose of evading the judgment, is dissipating assets, secreting assets, or diverting assets other than in the rdinary course of business outside the jurisdiction of North Carolina courts or the federal courts.

BILL ANALYSIS: Senate Bill 622 would authorize the courts to determine if the amount of the undertaking should be less than the judgment against the appellant. The court may reduce the amount of the undertaking if the court determines that the appellant would be unreasonably burdened to execute the undertaking in the full amount of the judgment. After notice and hearing, the court is to determine the lesser amount of the written undertaking that is proper. The court is to consider all of the following in making that determination:

- The amount of the judgment.
- The amount of the limits of all applicable liability policies of the appellant for which the insurer has released all reservations of right or the right to deny coverage.
- The aggregate net worth of the appellant.

EFFECTIVE DATE: October 1, 2009 and applies to actions filed on or after that date.

S622-SMST-29(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 716

Short Title:	2009 Omnibus Campaign Finance Law Changes.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CAMPAIGN FINANCE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.5 reads as rewritten:

"**§ 163-278.5. Scope of Article; severability.**

The provisions of this Article apply to primaries and elections for North Carolina offices and to North Carolina referenda and do not apply to primaries and elections for federal offices or offices in other States or to non-North Carolina referenda. Any provision in this Article that regulates a non-North Carolina entity does so only to the extent that the entity's actions affect elections for North Carolina offices or North Carolina referenda.

The provisions of this Article are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the Article that can be given effect without the invalid provision.

This section applies to Articles 22B, 22D, 22E, 22F, 22G, 22H, 22J, and 22M of the General Statutes to the same extent that it applies to this Article."

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

SENATE BILL 716:
2009 Omnibus Campaign Finance Law Changes

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 5, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 716 would clarify that the public financing for certain Council of State races applies to primaries and general elections in North Carolina.***

CURRENT LAW: G.S. 163-278.5 provides that the campaign finance laws apply to primaries and elections for North Carolina offices and to North Carolina referenda. It specifically states that the campaign finance laws do not apply to primaries and elections for federal offices, offices in other States, or to non-North Carolina referenda. The provisions in the campaign finance law that regulate non-North Carolina entities do so only to the extent that the entity's actions affect elections for North Carolina offices or North Carolina referenda.

The provisions of the campaign finance law are severable, meaning if any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the campaign finance law that can be given effect without the invalid provision.

Currently, the same language applies to these other Articles in Chapter 163, Election Law:

- Article 22B -- Appropriations from the North Carolina Political Parties Financing Fund.
- Article 22D -- The North Carolina Public Campaign Fund.
- Article 22E -- Electioneering Communications.
- Article 22F -- Mass Mailings and Telephone Banks: Electioneering Communications.
- Article 22G -- Candidate-Specific Communications.
- Article 22H -- Mass Mailings and Telephone Banks: Candidate-Specific Communications.
- Article 22M -- Legal Expense Funds.

BILL ANALYSIS: Senate Bill 716 would apply the same general applicability language in G.S. 163-278.5 to Article 22J, The Voter-Owned Elections Act. Article 22J governs public financing for three Council of State races: Auditor, Superintendent of Public Instruction, and Commissioner of Insurance.

Article 22J was enacted in 2007, and Senate Bill 716 would make a conforming change that was inadvertently overlooked at that time.

EFFECTIVE DATE: Effective when it becomes law, but may not be implemented until the session law has received 'preclearance' approval under Section 5 of the Voting Rights of 1965 by the U.S. Department of Justice.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 718

Short Title:	2009 Omnibus Election Law Changes.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE ELECTION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-227.2(g) reads as rewritten:

"(g) Notwithstanding any other provision of this section, a county board of elections by unanimous vote of all its members may provide for one or more sites in that county for absentee ballots to be applied for and cast under this section. A county board of elections may demand and use as a one-stop site under this section any facility that it may demand and use under G.S. 163-129 as an election day voting place. Every individual staffing any of those sites shall be a member or full-time employee of the county board of elections or an employee of the county board of elections whom the board has given training equivalent to that given a full-time employee. Those sites must be approved by the State Board of Elections as part of a Plan for Implementation approved by both the county board of elections and by the State Board of Elections which shall also provide adequate security of the ballots and provisions to avoid allowing persons to vote who have already voted. The Plan for Implementation shall include a provision for the presence of political party observers at each one-stop site equivalent to the provisions in G.S. 163-45 for party observers at voting places on election day. A county board of elections may propose in its Plan not to offer one-stop voting at the county board of elections office; the State Board may approve that proposal in a Plan only if the Plan includes at least one site reasonably proximate to the county board of elections office and the State Board finds that the sites in the Plan as a whole provide adequate coverage of the county's electorate. If a county board of elections has considered a proposed Plan or Plans for Implementation and has been unable to reach unanimity in favor of a Plan, a member or members of that county board of elections may petition the State Board of Elections to adopt a plan for it. If petitioned, the State Board may also receive and consider alternative petitions from another member or members of that county board. The State Board of Elections may adopt a Plan for that county. The State Board, in that plan, shall take into consideration factors including geographic, demographic, and partisan interests of that county. The State Board of Elections shall not approve, either in a Plan approved unanimously by a county board of elections or in an alternative Plan proposed by a member or members of that board, a one-stop site in a building that the county board of elections is not entitled under G.S. 163-129 to demand and use as an election-day voting place, unless the State Board of Elections finds that other equally suitable sites were not available and that the use of the sites chosen will not unfairly advantage or disadvantage geographic, demographic, or partisan interests of that county."

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

SENATE BILL 718:
2009 Omnibus Election Law Changes

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 5, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 718 would authorize a county board of election to demand and use any facility as a one-stop voting site any facility that it could demand and use for election-day voting.

CURRENT LAW: G.S. 163-129 permits county boards of election to demand and use, for voter registration, primary elections, or general elections any of the following facilities:

- Schools
- Other State, county, or municipal buildings, or a part thereof.
- Any other building, or a part thereof, which is supported or maintained, in whole or in part by or through tax revenues.

The county boards may require that the requisitioned premises, or a part thereof, be vacated for these purposes. The county boards may also require that those in control of the tax-supported building provide parking that is adequate for voters at the precinct, as determined by the county board of elections.

County boards are not permitted to demand and use any tax exempt church property for voting purposes without the express consent of the individual church involved.

BILL ANALYSIS: Senate Bill 718 would authorize a county board of election to demand and use any facility as a early voting site any facility that it could demand and use for election-day voting.

EFFECTIVE DATE: Effective when it becomes law, but may not be implemented until the session law has received 'preclearance' approval under Section 5 of the Voting Rights of 1965 by the U.S. Department of Justice.

S718-SMST-27(e1) v3

Attachment 24

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5/7/09

S. B. No. 718 Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Stevens

Sen.)

moves to amend the bill on page 1, line 9

( ) WHICH CHANGES THE TITLE

by deleting the phrase "place." and

Substituting the phrase "place except for buildings supported or maintained in whole or in part by or through tax revenues that are utilized primarily for emergency services purposes."

public safety or

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 763*

Short Title:	Legal Services Clarification.	(Public)
Sponsors:	Senators Stein; Clodfelter, Kinnaird, and McKissick.	
Referred to:	Judiciary I.	

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORIZATION FOR NONPROFIT CORPORATIONS TO RENDER LEGAL SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-5.1 reads as rewritten:

"**§ 84-5.1. Rendering of indigent legal services by nonprofit corporations.**

Subject to the rules and regulations of the North Carolina State Bar, as approved by the Supreme Court of North Carolina, a nonprofit corporation, organized or operating under Chapter 55A of the General Statutes of North Carolina for benevolent or charitable purposes or for the ~~sole~~ purpose of rendering indigent legal services, may render ~~such~~ legal services through attorneys duly licensed to practice law in North Carolina."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 763*
PROPOSED COMMITTEE SUBSTITUTE S763-CSST-17 [v.1]

4/28/2009 7:00:25 PM

Short Title: Legal Services Clarification. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORIZATION FOR CERTAIN NONPROFIT CORPORATIONS TO RENDER LEGAL SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-5.1 reads as rewritten:

"**§ 84-5.1. Rendering of ~~indigent~~ legal services by certain nonprofit corporations.**

(a) Subject to the rules and regulations of the North Carolina State Bar, as approved by the Supreme Court of North Carolina, a nonprofit corporation, organized and operating under 26 U.S.C. §501(c)(3) and Chapter 55A of the General Statutes of North Carolina for benevolent or charitable purposes or for the ~~sole~~ primary purpose of rendering indigent legal services, may render ~~such~~ legal services ~~through~~provided by attorneys duly licensed to practice law in North Carolina. The nonprofit corporation must have a governing structure that does not permit an individual or group of individuals other than a lawyer duly licensed to practice law in North Carolina to control the manner or course of the legal services rendered and must continually satisfy the criteria established by the Internal Revenue Service for 26 U.S.C. §501(c)(3) status, whether or not any action has been taken to revoke that status.

(b) In no instance may legal services rendered by a nonprofit corporation under subsection (a) of this section be conditioned upon the purchase or payment for any product, good, or service other than the legal service rendered."

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

SENATE BILL 763: Legal Services Clarification

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 6, 2009
Introduced by:	Sen. Stein	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to First Edition S763-CSST-17		Committee Counsel

SUMMARY: ***Senate Bill 763 would clarify that certain non-profit organizations may provide legal services.***

[As introduced, this bill was identical to H904, as introduced by Reps. Bryant, Rhyne, Stam, Ross, which is currently in House Judiciary I, if favorable, Appropriations.]

CURRENT LAW: The corporate practice of law is prohibited in North Carolina. G.S. 84-5. Exceptions are made for the following:

- Non-profit corporations, organized under Chapter 55A of the General Statutes of North Carolina, for the ***sole*** purpose of rendering indigent legal services. G.S. 84-5.1.
- Any law school conducting a legal clinic and receiving as its clientage only those persons unable financially to compensate for legal advice or services rendered, and any law student permitted to act as a legal intern in that legal clinic. G.S. 84-8(1).
- Any law student permitted by the North Carolina State Bar to act as a legal intern for a federal, state, or local government agency. G.S. 84-8(2).
- Any lawyer licensed by another state and permitted by the North Carolina State Bar to represent indigent clients on a pro bono basis under the supervision of active members employed by nonprofit corporations qualified to render legal services. This does not apply to a lawyer whose license has been suspended or revoked in any state. G.S. 84-8(3).

The district attorney is to bring, upon the application of any member of the Bar, or of any bar association, of the State of North Carolina, to enjoin any corporation practicing law. G.S. 84-7. A violation is a Class 1 misdemeanor.

BILL ANALYSIS: The proposed committee substitute would clarify that following may render legal services:

- A 501(c)(3) non-profit organized in North Carolina for benevolent or charitable purposes.
- A 501(c)(3) non-profit organized in North Carolina for the ***primary*** purpose of rendering indigent legal services.

The 501(c)(3) must comply with all of the following:

- Have a governing structure that does not permit an individual or group of individuals other than a lawyer duly licensed to practice law in North Carolina to control the manner or course of the legal services rendered.
- Must continually satisfy the criteria established by the Internal Revenue Service for 501(c)(3) status.
- Not condition the provision of legal services upon the purchase or payment for any product, good, or service other than the legal service rendered.

EFFECTIVE DATE: Effective when it becomes law.

S763-SMST-30(CSST-17) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 764

Short Title:	Real Estate/Settlement Agent Embezzlement.	(Public)
Sponsors:	Senator Stein.	
Referred to:	Judiciary I.	

March 24, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE GOOD FUNDS SETTLEMENT ACT TO CLARIFY THAT A SETTLEMENT AGENT IS GUILTY OF EMBEZZLEMENT IN INSTANCES WHERE IT CANNOT BE SHOWN THAT THE FUNDS WERE EMBEZZLED FROM A PARTICULAR PERSON OR ENTITY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 45A of the General Statutes is amended by adding a new section to read as follows:

"**§ 45A-8. Emblezzlement of closing funds by settlement agent.**

All closing funds received by a settlement agent are trust or escrow funds received by the settlement agent in a fiduciary capacity. A settlement agent in the disbursement of closing funds shall account for and pay the closing funds to the parties or entities identified for payment of the closing funds pursuant to the settlement agreement approved by the parties to the transaction. Any settlement agent who shall embezzle or fraudulently or knowingly and willfully misapply or convert to his or her own use, or shall take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his or her own use the closing funds or any portion of the closing funds, except those closing funds representing the settlement agent's fees and expenses, shall be guilty of embezzlement under G.S. 14-90 regardless of whether the embezzled, misapplied, or converted closing funds have been proved to belong to a specific party."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 764
PROPOSED COMMITTEE SUBSTITUTE S764-PCS85220-ST-23

Short Title: Real Estate/Settlement Agent Embezzlement. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING THE GOOD FUNDS SETTLEMENT ACT TO CLARIFY THAT A SETTLEMENT AGENT IS GUILTY OF EMBEZZLEMENT IN INSTANCES WHERE IT CANNOT BE SHOWN THAT THE FUNDS WERE EMBEZZLED FROM A PARTICULAR PERSON OR ENTITY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 45A of the General Statutes is amended by adding a new section to read as follows:

"**§ 45A-8. Embezzlement of closing funds by settlement agent.**

All closing funds received by a settlement agent are trust or escrow funds received by the settlement agent in a fiduciary capacity. A settlement agent in the disbursement of settlement proceeds shall account for and pay the closing funds to the parties or entities identified for payment of the closing funds pursuant to the settlement agreement approved by the parties to the transaction. Any settlement agent who shall embezzle or fraudulently or knowingly and willfully misapply or convert to his or her own use, or shall take, make away with, or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his or her own use the closing funds or any portion of the closing funds, except those closing funds representing the settlement agent's fees and expenses, shall be guilty of embezzlement under G.S. 14-90 regardless of whether the embezzled, misapplied, or converted closing funds have been proved to belong to a specific party."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

SENATE BILL 764:
Real Estate/Settlement Agent Embezzlement

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 6, 2009
Introduced by:	Sen. Stein	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to First Edition S764-CSST-23		Committee Counsel

SUMMARY: ***Senate Bill 764 would provide that a settlement agent is guilty of embezzlement in instances where it cannot shown that the funds where embezzled from a specific party.***

CURRENT LAW: A person is guilty of embezzlement if that person fraudulently, or knowingly and willingly, uses for a purpose other than that for which the defendant received it the property of another held by the defendant under his or her care. Punishment is a Class C felony if the value of the property is $100,000 or more, and a Class H felony if the value of the property is below $100,000. G.S. 14-90 (see below)

BILL ANALYSIS: The proposed committee substitute for Senate Bill 764 would specifically state that whether or not the funds are proved to belong to a specific party, settlement agents are guilty of embezzlement under G.S. 14-90 if the settlement agent embezzles or fraudulently or knowingly and willfully misapplies or converts to the settlement agent's own use, or takes, makes away with or secretes, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to the settlement agent's own use, the closing funds or any portion of the closing funds except that portion which is the settlement agent's fees and expenses.

EFFECTIVE DATE: December 1, 2009, and applies to offenses on or after that date.

§ 14-90. Embezzlement of property received by virtue of office or employment.

If any person exercising a public trust or holding a public office, or any guardian, administrator, executor, trustee, or any receiver, or any other fiduciary, or any officer or agent of a corporation, or any agent, consignee, clerk, bailee or servant, except persons under the age of 16 years, of any person, shall embezzle or fraudulently or knowingly and willfully misapply or convert to his own use, or shall take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his own use any money, goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any bank or other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any state, or any other valuable security whatsoever belonging to any other person or corporation, unincorporated association or organization which shall have come into his possession or under his care, he shall be guilty of a felony. If the value of the property is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the value of the property is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony.

S764-SMST-32(CSST-23) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 797

Short Title:	Reasons for Judge's Disqualification.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I.	

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT 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 26A.

"Disqualification of Judges.

"**§ 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 2. 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 3. This act becomes effective July 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 797
PROPOSED COMMITTEE SUBSTITUTE S797-CSRW-25 [v.5]

4/15/2009 3:19:06 PM

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 section 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:	Senate Judiciary I	**Date:**	May 6, 2009
Introduced by:	Sen. Rand	**Prepared by:**	Giles S. Perry Committee Counsel
Analysis of:	PCS to First Edition S797-CSRW-25		

SUMMARY: Senate Bill 797 (PCS) 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 "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.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 870

Short Title:	Make General Statutes Gender Neutral.	(Public)
Sponsors:	Senator Stevens.	
Referred to:	Judiciary I.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE REVISOR OF STATUTES TO MAKE THE GENERAL STATUTES GENDER NEUTRAL AND TO RECOMMEND OTHER STATUTORY AND CONSTITUTIONAL CHANGES TO THAT END.

The General Assembly of North Carolina enacts:

SECTION 1. The Revisor of Statutes is directed to make all changes to the General Statutes that do not change the law necessary to ensure that references to individuals are gender neutral where applicable. In implementing this section, the Revisor of Statutes is authorized to make outright substitutions consistent with examples in the North Carolina General Assembly Drafting Manual.

SECTION 2. The General Statutes Commission shall recommend to the 2010 Session of the 2009 General Assembly and the 2011 Session of the 2011 General Assembly any changes needed to make the General Statutes and the Constitution gender neutral that the Revisor of Statutes determines under Section 1 of this act cannot be made without an act of the General Assembly.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 870
PROPOSED COMMITTEE SUBSTITUTE S870-PCS85218-RW-39

Short Title: Make General Statutes Gender Neutral. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE GENERAL STATUTES COMMISSION TO STUDY AND MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY ON ANY CHANGES NEEDED TO MAKE THE GENERAL STATUTES AND CONSTITUTION GENDER NEUTRAL.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes Commission shall study and recommend to the 2010 Regular Session of the 2009 General Assembly and the 2011 Regular Session of the General Assembly ways to make the General Statutes and the North Carolina Constitution gender neutral. These may include recommending legislative changes needed to make the General Statutes and the Constitution gender neutral and a process to be authorized by the General Assembly whereby changes that do not change the law can be made administratively by the Attorney General to make the General Statutes gender neutral.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 870
PROPOSED COMMITTEE SUBSTITUTE S870-CSRU-3 [v.3]

5/2/2009 5:04:55 PM

Short Title: Make General Statutes Gender Neutral. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE GENERAL STATUTES COMMISSION TO STUDY AND MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY ON ANY CHANGES NEEDED TO MAKE THE GENERAL STATUTES AND CONSTITUTION GENDER NEUTRAL.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes Commission shall study and recommend to the 2010 Regular Session of the 2009 General Assembly and the 2011 Regular Session of the General Assembly ways to make the General Statutes and the North Carolina Constitution gender neutral. These may include recommending legislative changes needed to make the General Statutes and the Constitution gender neutral and a process to be authorized by the General Assembly whereby changes that do not change the law can be made administratively by the Attorney General to make the General Statutes gender neutral.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 167

Short Title:	No Smoking/Cell Phones on Prison Grounds.	(Public)
Sponsors:	Senators Albertson; Allran, Atwater, Bingham, Blake, Boseman, Clodfelter, Davis, Dorsett, Hartsell, Jenkins, Jones, Malone, Purcell, Rand, Rouzer, and Stevens.	
Referred to:	Judiciary I.	

February 16, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT SMOKING ON THE PREMISES OF CORRECTIONAL INSTITUTIONS AND TO MAKE IT A FELONY 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 prohibited in State correctional facilities.**

(a) The General Assembly finds that in order to protect the health, welfare, and comfort of inmates in the custody of the Department of Correction and to reduce the costs of inmate health care, it is necessary to prohibit inmates from using tobacco products ~~inside~~ 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.

(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. 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, or any person who knowingly gives or sells any tobacco product to a person who is not an inmate for delivery to an inmate, other than for authorized religious purposes, is guilty of a Class I felony.

(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 I felony."

SECTION 3. 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 4. This act becomes effective December 1, 2009, and applies to acts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 167
PROPOSED COMMITTEE SUBSTITUTE S167-PCS55372-SA-21

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.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 167
PROPOSED COMMITTEE SUBSTITUTE S167-CSSA-21 [v.4]

5/6/2009 8:26:11 PM

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), 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:	Senate Judiciary I	**Date:**	April 29, 2009
Introduced by:	Sen. Albertson	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S167-CSSA-21		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 167 prohibits smoking on the premises of correctional institutions, prohibits the possession of tobacco products or cell phones outside of a locked vehicle on the premises of correctional institutions, and makes it a criminal offense to provide tobacco products or cell phones to inmates in the custody of the Department of Correction.***

BILL ANALYSIS:

Section 1 amends G.S. 148-23.1 to prohibit the use and possession of tobacco products 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 creates a new G.S. 148-23.2, which prohibits the possession of a cell phone 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 amends G.S. 14-258.1 to create 2 new offenses.

- A Class 1 misdemeanor for anyone who 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.
- A Class 1 misdemeanor for anyone who 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 requires the Department of Correction to provide notice to inmates, staff and the public of the prohibitions and penalties established in this act.

EFFECTIVE DATE: This act becomes effective March 1, 2010, and applies to acts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 464
PROPOSED COMMITTEE SUBSTITUTE S464-CSSA-30 [v.2]

5/6/2009 9:55:45 PM

Short Title: Prevent Racial Profiling. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REQUIRING THE COLLECTION OF TRAFFIC LAW ENFORCEMENT STATISTICS IN ORDER TO PREVENT RACIAL PROFILING AND TO PROVIDE FOR THE CARE OF MINOR CHILDREN WHEN PRESENT AT THE ARREST OF CERTAIN ADULTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-10.01 reads as rewritten:

"**§ 114-10.01. Collection of traffic law enforcement statistics.**

(a) In addition to the duties set forth in G.S. 114-10, the Division of Criminal Statistics shall collect, correlate, and maintain the following information regarding traffic law enforcement by law enforcement officers:

(1) The number of drivers stopped for routine traffic enforcement by law enforcement officers, the officer making each stop, the date each stop was made, the agency of the officer making each stop, and whether or not a citation or warning was issued.

(2) Identifying characteristics of the drivers stopped, including the race or ethnicity, approximate age, and gender.

(3) The alleged traffic violation that led to the stop.

(4) Whether a search was instituted as a result of the stop.

(5) Whether the vehicle, personal effects, driver, or passenger or passengers were searched, and the race or ethnicity, approximate age, and gender of each person searched.

(6) Whether the search was conducted pursuant to consent, probable cause, or reasonable suspicion to suspect a crime, including the basis for the request for consent, or the circumstances establishing probable cause or reasonable suspicion.

(7) Whether any contraband was found and the type and amount of any such contraband.

(8) Whether any written citation or any oral or written warning was issued as a result of the stop.

(9) Whether an arrest was made as a result of either the stop or the search.

(9a) If an arrest was made, whether there were minor children in the vehicle at the time of that arrest and in whose custody the child or children were placed.

(10) Whether any property was seized, with a description of that property.
(11) Whether the officers making the stop encountered any physical resistance from the driver or passenger or passengers.
(12) Whether the officers making the stop engaged in the use of force against the driver, passenger, or passengers for any reason.
(13) Whether any injuries resulted from the stop.
(14) Whether the circumstances surrounding the stop were the subject of any investigation, and the results of that investigation.
(15) The geographic location of the stop; if the officer making the stop is a member of the State Highway Patrol, the location shall be the Highway Patrol District in which the stop was made; for all other law enforcement officers, the location shall be the city or county in which the stop was made.

(b) For purposes of this section, "law enforcement officer" means any of the following:
(1) All State law enforcement officers.
(2) Law enforcement officers employed by county sheriffs or county police departments.
(3) Law enforcement officers employed by police departments in municipalities with a population of 10,000 or more persons.
(4) Law enforcement officers employed by police departments in municipalities employing five or more full-time sworn officers for every 1,000 in population, as calculated by the Division for the calendar year in which the stop was made.

(c) The information required by this section need not be collected in connection with impaired driving checks under G.S. 20-16.3A or other types of roadblocks, vehicle checks, or checkpoints that are consistent with the laws of this State and with the State and federal constitutions, except when those stops result in a warning, search, seizure, arrest, or any of the other activity described in subdivisions (4) through (14) of subsection (a) of this section.

(d) ~~The identity of the law enforcement officer making the stop required by subdivision (1) of subsection (a) of this section may be accomplished by assigning~~ Each law enforcement officer making a stop covered by subdivision (1) of subsection (a) of this section shall be assigned an anonymous identification ~~numbers to each officer in an~~ number by the officer's employing agency. The anonymous identifying number shall be public record and shall be reported to the Division to be correlated along with the data collected under subsection (a) of this section. The correlation between the identification numbers and the names of the officers shall not be a public record, and shall not be disclosed by the agency except when required by order of a court of competent jurisdiction to resolve a claim or defense properly before the court.

(d1) Any agency subject to the requirements of this section shall submit information collected under subsection (a) of this section to the Division within 30 days of the close of each month. Any agency that does not submit the information as required by this subsection shall be ineligible to apply for any law enforcement grants available by or through the State until the information which is reasonably available is submitted.

(e) The Division shall publish and distribute by December 1 of each year a list indicating the law enforcement officers that will be subject to the provisions of this section during the calendar year commencing on the following January 1."

SECTION 2. G.S. 15A-401 is amended by adding a new subsection to read:

"(g) Care of Minor Children. – When a law enforcement officer arrests an adult who is supervising minor children at the time of the arrest, the minor children must be placed with a responsible adult approved by a parent or guardian of the minor children. If it is not possible to place the minor children with a responsible adult approved by a parent or guardian within a

reasonable period of time, the law enforcement officer shall contact the county department of social services.

SECTION 2. This act becomes effective January 1, 2010.

SENATE BILL 464: Prevent Racial Profiling

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 6, 2009
Introduced by:	Sen. McKissick	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition S464-CSSA-30		

SUMMARY: ***The proposed committee substitute for Senate Bill 464 amends the law requiring the collection of traffic law enforcement statistics in order to prevent racial profiling and provides for the care of minor children when present at the arrest of certain adults.***

BILL ANALYSIS:

Section 1 amends G.S. 114-10.01; regarding collection of traffic law enforcement statistics, as follows:

- If an arrest was made, requires information to be collected on whether there were minor children in the vehicle at the time of the arrest and in whose custody they were placed.
- Requires employing law enforcement agencies to assign each officer an anonymous identifying number and to make those numbers public record.
- Requires agency subject to the reporting requirements to submit the collected information to the Division of Criminal Statistics within 30 days of the close of each month. Any agency that does not submit the information on time shall be ineligible to apply for any law enforcement grants available by or through the State until the information which is reasonably available is submitted.

Section 2 amends G.S. 15A-401 to require a law enforcement officer who arrests an adult who is supervising minor children at the time of the arrest to place the minor children with a responsible adult approved by a parent or guardian of the minor children. If it is not possible to place the minor children with a responsible adult approved by a parent or guardian within a reasonable time, the law enforcement officer shall contact the county department of social services.

EFFECTIVE DATE: This act becomes effective January 1, 2010.

SENATE JUDICIARY I COMMITTEE
(Civil)

May 12, 2009
9:00 a.m. – Room 1027

The Senate Judiciary I Committee met Tuesday, May 12, 2009, in Room 1027 of the Legislative Building. Senators present were Committee Chairman Senator L. Martin Nesbitt, Vice-Chairmen Senators Dan Clodfelter, Pete Brunstetter, R. C. Soles, and Josh Stein; members, Senator Phil Berger, Andrew Brock, Harry Brown, Malcolm Graham, David Hoyle, Clark Jenkins, Ellie Kinnaird, Floyd McKissick, Tony Rand, David Rouzer, Richard Stevens, and Jerry Tillman, Staff Counsel Erika Churchill, Giles Perry, Susan Sitz, and Bill Patterson.

Committee Chairman Martin Nesbitt called the meeting to order and recognized Senator Stein to explain S.B. 1017 – Enhance Protection Against Identity Theft. A Proposed Committee Substitute was distributed to the members and Senator Stein moved that it be adopted for consideration. Senator Stein explained the bill and asked Attorney General Roy Cooper to speak on the bill. Staff Counsel Erika Churchill assisted in explaining the bill. After questions and discussion Senator Rand moved for a favorable report for the PCS for S.B. 1017 and it passed.

Senator Stein was recognized to explain S.B. 1021 – Property Finders. A Proposed Committee Substitute for S.B. 1021 was distributed to the committee and Senator Stein moved that it be adopted. The motion passed. State Treasurer, Janet Cowell spoke in favor of the bill. Senator Rand moved to give the original bill an unfavorable report and favorable to the Proposed Committee Substitute for S.B. 1021. It passed unanimously.

Senator Clodfelter chaired the meeting while Senator Nesbitt explained S.B. 966 – Expanded Voter-Owned Elections. Staff Counsel Erika Churchill assisted in explaining the bill. Senator Nesbitt sent forth an amendment and moved it be adopted. The motion passed. After some discussion Senator Rand sent forth an amendment and moved it be adopted and it passed. Treasurer Janet Cowell spoke in favor of the bill and asked the committee for support. Judy Burke, president of the League of Women Voters also spoke in favor of the bill. Senator Nesbitt moved to adopt the Proposed Committee Substitute and the motion passed. There were questions and discussion by the committee members. Senator Graham moved to combine the amendments into a new PCS and give the new PCS for S.B. 966 a favorable report and unfavorable for the original bill and to refer the bill to the Committee on Appropriations and the motion passed.

Senator Stein was recognized to explain S.B. 817 – Increase Child Support Collections. Staff Counsel Erika Churchill assisted Senator Stein in explaining S.B. 817. District Court Judge Kristen Ruth was recognized to speak on resources that could be used to keep parents working and answered questions from the committee members. A Proposed Committee Substitute for S.B. 817 was presented and Senator Stein moved to adopt the PCS for discussion. Motion passed. After questions and discussion Senator Stein moved

for a favorable report for the Proposed Committee Substitute for S.B. 817 and unfavorable to the original bill. The motion passed.

Senator Rand was recognized to explain S.B. 440 – Establish Gestational Surrogacy Agreements. He presented a Proposed Committee Substitute for S.B. 440 and moved that it be adopted for consideration. The motion passed. Senator Nesbitt recognized Cumberland County District County Judge Beth Keever who explained why she felt the legislation was needed. Staff Counsel, Erika Churchill was recognized to explain the bill. After questions and discussion and concerns by the committee members Senator Rand moved for a favorable report for the PCS and unfavorable to the original bill. The motion passed.

Senator Rand was recognized to explain S.B. 920 – Probation Reform. A Proposed Committee Substitute was distributed to the committee and Senator Rand moved for it to be adopted for consideration and after questions and discussion Senator Rand moved for a favorable report for the PCS for S.B. 920 and unfavorable for the original bill and it passed.

Senator Nesbitt recognized the President of the North Carolina Medical Board, Mr. George Saunders, III, MD to speak on S.B. 958 and told the members that the bill would not be taken up at this time, but rather during the afternoon meeting.

Senator Forrester was recognized to explain S.B. 36 – Expand Chemical Analysis Sites/Controlled Substance. Staff Counsel Susan Sitze was recognized to explain the bill and after questions and discussion Senator Tillman moved to give S.B. 36 a favorable report and it passed.

Senator Nesbitt recognized Senator Boseman to explain S.B. 11 – D.A. & Assistant D.A./Concealed Gun in Court House. A Proposed Committee Substitute was distributed to the committee and was adopted for consideration. Staff Counsel, Susan Sitze explained the bill. Senator Nesbitt recognized Joe Bowman, Assistant D.A. from Wilmington, N.C. to speak on the bill. He told the committee that the bill was needed for women prosecutors. Senator Tillman thought the law for D.A.'s should be the same as the law for judges and he offered an amendment. John Snider, D.A. from Union County spoke in favor of the bill. Senator Stein moved to amend the bill and the motion passed. Senator Berger moved to roll the amendment into a new PCS for S.B. 11 and give the new PCS for S.B. 11 a favorable report and unfavorable to the first PCS for S.B. 11and the original bill.

The meeting was adjourned.

Copies of PCS forS.B.1017, Bill Analysis for PCS for S.B. 1017, PCS for S.B. 1021, PCS for S.B. 966, Bill Analysis for PCS for S.B. 966, Amendment #1 for PCS for S.B. 966, Amendment #2 for PCS for S.B. 966, PCS for S.B. 817, Sanction Comparison and Fundamentals of Social Services law for S.B. 817, PCS for S.B. 440, Bill Analysis for PCS for S.B. 440, PCS for S.B. 920, S.B. 36, PCS for S.B. 11, Bill Analysis for PCS for

S.B. 11, Amendment for S.B. 11 are attached to these Minutes as Attachments I,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17 respectively.

Respectfully Submitted,

Senator Martin L. Nesbitt
Chairman

Janette W. Lee
Committee Assistant

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Pete Brunstetter, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman
Senator Josh Stein, Vice Chairman

Tuesday, May 12, 2009
9 a.m.
Room 1027

1 Call Meeting to Order.

2. Recognize members, staff, and guests.

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
SB 9	Amend Peeping Tom Law	Senator Boseman
SB 11	DA & Ass't DA/Concealed Gun in Ct. House.	Senator Boseman
SB 36	Expand Chem. Analysis Sites/Contr. Substance.	Senator Forrester
SB 158	Modify Felony Death By Vehicle Penalty.	Senator Berger
SB 219	Report Bicycle Crashes to Law Enforcement.	Senator Kinnaird
SB 300	Amend Speeding to Elude Arrest Statute.	Senator Boseman
SB 309	Capital Procedure/Severe Mental Disability.	Senator Kinnaird
SB 336	Matching Funds Repeal.	Senator Berger

pcs bill analy.

pcs	SB 440	Establish Gestational Surrogacy Agreements.	Senator Rand
	SB 461	North Carolina Racial Justice Act.	Senator McKissick
	SB 464	Prevent Racial Profiling.	Senator McKissick
	SB 488	Establish Proportionate Sentence Lengths.	Senator Kinnaird
	SB 489	Even Out Prior Criminal Record Points.	Senator Kinnaird
	SB 490	Adjust B1-E Felony Penalties.	Senator Kinnaird
	SB 491	Expunge Nonviolent Crimes.	Senator Kinnaird
	SB 527	Amend Second Degree Rape & Sexual Offense.	Senator Boseman
	SB 586	File Lis Pendens for Certain Erosion Actions.	Senator McKissick
	SB 661	Contiguous Premises/Allocate Cost for Water.	Senator Clodfelter
	SB 679	Uniform Apportionment of Tort Responsibility.	Senator Brunstetter
	SB 695	Restraining of Dogs.	Senator Garrou
	SB 704	Pooled Trusts/Medicaid Reimbursement.	Senator Rand
	SB 726	Amend House Arrest Laws/Adult/Juvenile.	Senator Berger
	SB 727	Require Chemical Test/Crashes Involving Death.	Senator Berger
	SB 794	Sex Offender/Incapacity To Proceed.	Senator Rand
	SB 802	Immunity for Volunteer Physicians.	Senator Rand
	SB 803	Protect Third-Party Purchasers for Value.	Senator Rand
	SB 812	Partition Sales/ Buyout Provision.	Senator McKissick
① pcs	SB 816	Office of Prosecution Services.	Senator Brunstetter
② sant comp	SB 817	Increase Child Support Collections.	Senator Stein
③ criminal vs civil contempt	SB 821	Limit Liability for Emergency Room Care.	Senator Brunstetter
	SB 859	Tort Claims Act/Local Gov. Opt-in.	Senator Clodfelter
	SB 900	Enable Registers of Deeds to Protect Identity.	Senator Rouzer
pcs	SB 920	Probation Reform.	Senator Rand
	SB 932	Guardianship/Incompetency.	Senator Clary
	SB 937	Limited Driving Privilege	Senator Davis

		Changes.	
	SB 945	Guardianship/Jurisdiction and Portability.	Senator Malone
	SB 946	Guardianship/Court-Appointed Counsel.	Senator Malone
	SB 958	Disciplinary Proceedings/NC Medical Board.	Senator Nesbitt, Jr.
	SB 961	Notice on Liens for HOA Assessments.	Senator Nesbitt, Jr.
pcs + amend	SB 966	Expanded Voter-Owned Elections.	Senator Nesbitt, Jr.
+ amend	SB 971	Close Sweepstakes Loophole.	Senator Rand
	SB 990	Increase Penalty/Timber Theft.	Senator Davis
	SB 992	Authorize Mayors to Solemnize Marriage.	Senator Davis
	SB 1015	Homeowner and Homebuyer Protection Act.	Senator Stein
pcs	SB 1017	Enhance Protections against Identity Theft.	Senator Stein
pcs	SB 1021	Property Finders.	Senator Stein
	SB 1026	Local Government Tort Claims Act.	Senator Rand
	SB 1056	Require Firearms Certification/Bail Bondsman.	Senator Shaw
	SB 1087	Continuous Alcohol Monitoring Systems.	Senator Snow

Adjournment.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1017
PROPOSED COMMITTEE SUBSTITUTE S1017-CSST-29 [v.5]

5/11/2009 11:51:17 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) 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 (e) 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, 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 the 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's of court 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:	Senate Judiciary I	**Date:**	May 12, 2009
Introduced by:	Sen. Stein	**Prepared by:**	R. Erika Churchill Committee Co-Counsel
Analysis of:	PCS to First Edition S1017-CSST-29		Denise Huntley Staff

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 eeze 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 makes various changes to G.S. 75-63, the security freeze section of the Identity Theft Protection Act:

- Allows 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.
- Requires that consumer reporting agencies that operate in North Carolina create and maintain a shared Web site and toll-free number for consumers to request a security freeze and other actions related to a security freeze. A request made to this system constitutes a request to all credit reporting agencies.
- Requests to place a security freeze, lift a security freeze for a specified period of time or to a specified party, or to permanently lift a freeze shall 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.

- Consumer reporting agencies shall not charge a fee in response to an electronic request to place, remove or lift a freeze. Additionally, no charge can be required to temporarily lift a freeze for a specified period of time, a specified person, to reinstate or to remove a security freeze regardless of the manner in which the request was made. 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.

Section 2 requires 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, addresses and Web site addresses for the major consumer reporting agencies, Federal Trade Commission and the NC Attorney General's Office.

Section 3 permits Registers of Deeds and Clerks of Court to remove personal identification information from their public Web sites without a request from a specific individual.

Section 4 requires 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 from their public Web sites beginning July 1, 2011. After this date, the current immunity from liability for Registers of Deeds and Clerks of Court will only apply if the optical character recognition technology is utilized.

Section 5 makes technical and conforming changes to the definitions in the Crime Victims Compensation Act.

Section 6 prohibits a creditor owed money for services provided to a victim as a result of criminal injurious conduct inflicted on the victim from reporting the debt to a consumer reporting agency while an application for an award from the Crime Victims Compensation Fund is pending, provided the victim has notified the creditor of the pending compensation claim.

Section 7 requires 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 once every 12 months prior to collecting a fee for credit monitoring services.

EFFECTIVE DATE: Effective October 1, 2009, except for Section 4, which becomes effective July 1, 2011.

S1017-SMTB-6(CSST-29) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1021
PROPOSED COMMITTEE SUBSTITUTE S1021-CSST-22 [v.2]

5/9/2009 4:21:49 PM

Short Title: Property Finders. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO PROTECT OWNERS OF ABANDONED PROPERTY BY REGULATING PROPERTY FINDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 116B-62 reads as rewritten:

"**§ 116B-62. Preparation of list of owners by Treasurer.**

(a) There shall be delivered in an electronic format to the Administrative Office of the Courts to be distributed to the clerk of superior court of each county prior to June 30 of each year a list prepared by the Treasurer of escheated and abandoned property reported to the Treasurer. The list shall contain:

(1) The names, if known, in alphabetical order of surname, and last known addresses, if any, of apparent owners of escheated and abandoned property;

(2) The names and addresses of the holders of the abandoned property; and

(3) A statement that claim and proof of legal entitlement to escheated or abandoned property shall be presented by the owner to the Treasurer, which statement shall set forth where further information may be obtained.

(b) At the time the lists are distributed to the clerks of superior court, but no later than June 30 of each year, the Treasurer shall cause to be published once each week for two consecutive weeks, in at least two newspapers having general circulation in this State, a notice stating the nature of the lists and that the lists are available for inspection at the offices of the respective clerks of superior court, together with any other information the Treasurer deems appropriate to appear in the notice.

(c) The Treasurer is not required to include in any list any item of a value, as determined by the Treasurer, in the Treasurer's discretion, of less than fifty dollars ($50.00), unless the Treasurer deems inclusion of items of lesser amounts to be in the public interest.

(d) The clerks of superior court shall ~~retain the lists on permanent file in their offices and shall make them~~ make the lists available for public inspection.

(e) The lists prepared by the Treasurer shall include only escheated and abandoned property reported for the current reporting date and are not required to be cumulative lists of escheated and abandoned property previously reported.

(f) Notwithstanding the provisions of Chapter 132 of the General Statutes, the supporting data and lists of apparent owners of escheated and abandoned property may be confidential until six months after the notice to clerks of superior court required by subsection

(b) of this section has been distributed. This subsection shall not apply to owners of reported property making inquiries about their property to the Escheat Fund."

SECTION 2. G.S. 116B-78 reads as rewritten:

"**§ 116B-78. Agreement to locate property.**

(a) An agreement ~~by an owner,~~ covered by this section, the primary purpose of which is to locate, ~~deliver,~~ recover, or assist in the recovery of property that is presumed abandoned, is being held by a clerk of superior court, or has been transferred to the State Treasurer by a clerk of superior court, is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the ~~Treasurer.~~ Treasurer or the clerk of superior court. Agreements under this section include power of attorney agreements and agreements to sale or release interest in property that is presumed abandoned. This subsection does not apply to an owner's agreement with an attorney to file a claim or special proceeding as to identified property or contest the Treasurer's denial of a ~~claim.~~ claim or a clerk's denial of a petition.

(b) An agreement ~~by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property,~~ covered by this section is enforceable only ~~if the agreement~~ if it meets all of the following criteria:

(1) ~~is~~ Is in ~~writing,~~ writing and clearly sets forth the nature of the property and the services to be ~~rendered,~~ rendered.

(2) ~~is~~ Is signed by the ~~owner,~~owner under oath.

(3) Describes the property, which includes the type of property, the property ID, and the name of the holder.

(4) States that there may be other claims to the property that may reduce the share of the owner.

(5) ~~and states~~ States the value of the property before and after the fee or other compensation has been ~~deducted.~~deducted.

(6) States clearly the fees and costs for services. Total fees and cost shall not exceed one thousand dollars ($1,000) or twenty percent (20%) of the value of the property recovered, whichever is less.

(7) Discloses that the property is being held by the North Carolina Department of State Treasurer's Unclaimed Property Program or in a clerk of superior court's office, as applicable.

(c) If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(d) Any person who enters into an ~~An~~ agreement covered by this section ~~that provides for compensation that is unconscionable is unenforceable except by the owner.~~ with an owner shall be allowed to receive cash property, but not tangible property or securities, on behalf of the owner but shall not be authorized to negotiate the check made payable to the owner. ~~An owner who has made an agreement to pay compensation that is unconscionable, or the Treasurer on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorneys' fees to an owner who prevails in the action.~~ Tangible property shall be delivered to the owner by the Treasurer, and securities will be reregistered into the owner's name.

(e) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than as provided in subsection ~~(d)~~ (b) of this section.

(f) Any person who enters into an agreement covered by this section with an owner shall register ~~annually~~ each calendar year with the Treasurer. The information to be required under this subsection shall include the person's name, address, telephone number, state of

incorporation or residence, as applicable, and the person's social security or federal identification number. A registration fee of one hundred dollars ($100.00) shall be paid to the Treasurer at the time of the filing of the registration information. Fees received under this subsection shall be credited to the General Fund.

(g) In addition to rendering an agreement void and unenforceable, a failure to comply with the provisions of this section constitutes an unfair or deceptive trade practice under G.S. 75-1.1."

SECTION 3. Article 22 of Chapter 28A of the General Statutes is amended by adding a new section to read:

"**§ 28A-22-11. Agreements with heirs.**

Any agreement by an heir, unknown or known but unlocated, the primary purpose of which is to locate or recover, or assist in the recovery, of a share in a decedent's estate shall be subject to the provisions of G.S. 116B-78(b).

SECTION 4. This act becomes effective October 1, 2009, and applies to agreements entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 966
PROPOSED COMMITTEE SUBSTITUTE S966-CSST-32 [v.1]

5/11/2009 6:12:27 PM

Short Title: Expanded Voter-Owned Elections. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE VOTER-OWNED ELECTIONS ACT TO COVER ADDITIONAL COUNCIL OF STATE POSITIONS AND TO MAKE TECHNICAL CHANGES TO THE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22J of Chapter 163 of the General Statutes reads as rewritten:

"Article 22J.

"The Voter-Owned Elections Act.

"§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.

The purpose of this Article is to ensure the vitality and fairness of democratic elections in North Carolina to the end that any eligible citizen of this State can realistically choose to seek and run for public office. It is also the purpose of this Article to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption is minimized and that the equal and meaningful participation of all citizens in the democratic process is ensured. Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund as an alternative source of campaign financing for candidates who obtain a sufficient number of qualifying contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for the Council of State offices of Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in elections to be held in 2008 and ~~thereafter.~~ thereafter, and to candidates for the Council of State offices of Secretary of State, Attorney General, Treasurer, Commissioner of Agriculture, and Commissioner of Labor in elections to be held in 2012 and thereafter.

"§ 163-278.96. Definitions.

The following definitions apply in this Article:

(1) Board. – The State Board of Elections.

(2) Campaign-related expenditure. – An expenditure that benefits the candidate's current campaign in accordance with guidelines established by the Board.

(3) Candidate. – An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a "candidate campaign committee" as defined in G.S. 163-278.38Z(3).

(4) Certified candidate. – A candidate for office who chooses to receive campaign funds from the Fund and who is certified under

G.S. 163-278.98(c). A write-in candidate authorized under G.S. 163-123 is not eligible to become a certified candidate.

(5) Contested primary and contested general election. – An election in which there are more candidates than the number to be elected.

(6) Contribution. – Defined in G.S. 163-278.6. A distribution from the Fund pursuant to this Article is not a "contribution" and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or G.S. 163-278.19. Instead of being subject to G.S. 163-278.16B, distributions are subject to the guidelines issued by the Board pursuant to G.S. 163-278.98(e)(5).

(6a) Electioneering communication. – As defined in G.S. 163-278.80 and G.S. 163-278.90, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day.

(7) Expenditure. – Defined in G.S. 163-278.6.

(8) Fund. – The North Carolina Voter-Owned Elections Fund established in G.S. 163-278.97.

(9) Independent expenditure. – Defined in G.S. 163-278.6.

(10) Maximum qualifying contributions. – If the candidate has ~~an uncontested~~ no primary, an amount equal to ~~100~~one hundred dollars ($100.00) times the ~~filing fee~~ minimum number of qualifying contributions required by G.S. 163-278.98(b) for the office sought. If the candidate has a contested primary, ~~200~~ two hundred dollars ($200.00) times the ~~filing fee~~ minimum number of qualifying contributions required by G.S. 163-278.98(b) for the office sought.

(11) Nonparticipating candidate. – A candidate for office who is not seeking to be certified under G.S. 163-278.98(c).

(12) Office. – The Council of State offices of Secretary of State, Attorney General, Treasurer, Auditor, Superintendent of Public Instruction, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

(13) Participating candidate. – A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.98(a).

(14) Political committee. – Defined in G.S. 163-278.6.

(15) Qualifying contribution. – A contribution of not less than ten dollars ($10.00) and not more than two hundred dollars ($200.00) in the form ~~of a check or money order~~ prescribed for noncash monetary contributions in G.S. 163-278.14(b) to the candidate that meets both of the following conditions:

a. Made by ~~any~~ an individual who is a registered voter in this ~~State.~~State at the time of the submittal of the report specified in G.S. 163-278.98(c).

b. Made only during the qualifying ~~period~~ period, except as provided in G.S. 163-278.98(b1), and obtained with the approval of the candidate or candidate's committee.

(16) Qualifying period. – The period beginning September 1 in the year before the election and ending on the 10th day after the day of the primary.

(17) Trigger for matching funds. – The dollar amount at which matching funds are released under G.S. 163-278.99B for certified candidates. In the case of a contested primary, the trigger equals the maximum qualifying contributions

for the candidate. In the case of a contested general election, the trigger equals the base level of funding available under G.S. 163-278.99(b)(4).

"**§ 163-278.97. Voter-Owned Elections Fund established; sources of funding.**

(a) Establishment of Fund. – The North Carolina Voter-Owned Elections Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

(b) Sources of Funding. – Money received from all the following sources must be deposited in the Fund:

(1) Unspent Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.

(2) Money ordered returned to the Fund in accordance with G.S. 163-278.99D.

(3) Money paid to the Fund equal to excess contributions as provided in G.S. 163-278.98(e)(1).

(4) Voluntary donations made directly to the Fund.

(5) Appropriations from the General Fund.

(c) Evaluation and Determination of Fund Amount. – By January 1, 2011, and every four years thereafter, the Board, in conjunction with the Advisory Council established under G.S. 163-278.68(b), shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund during the next election cycle and make recommendations about the feasibility of expanding its provisions to include other candidates for State office based on the experience of this Article and the experience of similar programs in North Carolina and other states. The Board shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates but is not reached by regulation.

"**§ 163-278.97A. Limitation on use of the Fund.**

If the amount in the Fund is less than $2.25 million on August 1 of the year before an election, then only certified candidates for Auditor, Superintendent of Public Instruction, and Commissioner of Insurance shall be eligible for a distribution of funds in accordance with G.S. 163-278.99. Certified candidates for Treasurer shall be eligible for a distribution of funds if the amount in the Fund is at least $4.5 million. Certified candidates for Secretary of State, Commissioner of Labor, and Commissioner of Agriculture shall be eligible for a distribution of funds if the amount in the Fund is at least $6 million. Certified candidates for Attorney General shall be eligible for a distribution of funds if the amount in the Fund is at least $8 million. Based upon documentation of the Fund's projected receipts and other factors, the Board may lower the dollar amounts in this section by a majority vote taken by September 1 of the year before an election.

"**§ 163-278.98. Requirements for participation.**

(a) Declaration of Intent to Participate. – Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the program established by this Article as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, campaign-related expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (e) of this section and all

other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. – In order to be certified, participating candidates must obtain qualifying contributions from at least ~~750~~ 900 registered voters in this ~~State.~~ State, and from an additional 100 registered voters in this State for each one hundred thousand dollars ($100,000) that the grant amount for the office under G.S. 163-278.99(b)(4) exceeds three hundred thousand dollars ($300,000). Multiple contributions from the same individual to the same candidate shall not count as more than one qualifying contribution.

The qualifying contributions shall be equal to at least ~~25~~ twenty dollars ($20.00) times the ~~amount of the filing fee for the office.~~ minimum number of qualifying contributions but shall not exceed the maximum qualifying contributions defined in G.S. 163-278.96(10). No payment, gift, ~~or~~ anything of ~~value~~ value, or the opportunity to win anything of value shall be given in exchange for a qualifying contribution.

(c) Certification of Candidates. – Upon receipt of a submittal of the record of qualifying contributions by a participating candidate, the Board shall determine whether or not the candidate has:

(1) Filed a completed declaration of intent to participate in this Article.

(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.

(3) Filed a notice of candidacy with the State Board of Elections as a candidate for the office.

(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of qualifying contributions.

(d) Final Report for Qualifying Contributions. – No later than five business days after the end of the qualifying period, all participating candidates shall submit a report to the Board of all previously unreported qualifying contributions, in accordance with procedures developed by the Board. Within seven business days after submittal of the final report, the Board shall determine, through a random audit or other means it adopts, whether the contributions abide by the definition of qualifying contributions, whether they must be returned to the donor, and whether they exceed the maximum amount of qualifying contributions.

(e) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. – The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning August 1 of the year before the election and before filing a declaration of intent, a candidate shall limit campaign-related expenditures to twenty thousand dollars ($20,000) and shall not accept more than twenty thousand dollars ($20,000) from sources and in amounts permitted by Article 22A of this Chapter. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Fund. However, the acceptance of contributions in excess of that twenty thousand dollar ($20,000) limit does not render the candidate ineligible if the candidate pays to the Board an amount equal to the contributions accepted by the candidate in excess of that limit. The Board shall deposit all such payments into the Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, in-kind party

contributions as permitted in subdivision (4) of this subsection, and personal and family contributions permitted under subdivision (4a) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. Except for personal and family contributions permitted under subdivision (4a) of this subsection, multiple contributions from the same contributor to the same candidate shall not exceed two hundred dollars ($200.00). In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this subsection and possible matching funds received pursuant to G.S. 163-278.99B. If the candidate has any remaining money that was raised as contributions before August 1 of the year before the election, the candidate may not expend that money after filing the declaration of intent, except for purposes permitted under subdivision (2), (3), (6), (7), or (8) of G.S. 163-278.16B(a).

(3) After the qualifying period and through the date of the general election, the candidate shall cease campaign-related fund-raising ~~activities~~ activities, except as provided in subsection (b1) of this section, and shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.99(b) plus any funds remaining from the qualifying period and possible matching funds.

(4) In addition to the amounts above, a candidate may accept in-kind contributions from political party executive committees, up to an aggregate value of thirty thousand dollars ($30,000) for the election cycle.

(4a) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. The candidate may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister. Up to two hundred dollars ($200.00) of a contribution from the candidate's family member may be treated as a qualifying contribution if it meets the requirements of G.S. 163-278.96(15)a. and b.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures.

(6) Except as provided in subdivision (1) of this subsection, any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.99D. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(f) Revocation. – A candidate may revoke, in writing to the Board, a decision to participate in the Fund at any time. After a revocation, that candidate may accept and expend

outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund.

"**§ 163-278.99. Distribution from the Fund.**

(a) Timing of Fund Distribution. – The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section as follows:

(1) One-third of the amount within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(2) The remainder of the amount on August 1 before the general election.

(b) Amount of Fund Distribution. ~~By August 1, 2011, and no less frequently than every four years thereafter,~~ No later than August 1 of the second year before an election, the Board shall determine the amount of funds, ~~rounded to the nearest one hundred dollars ($100.00),~~ to be distributed to certified candidates as follows:

(1) ~~Uncontested primaries.~~ No primary. – No funds shall be distributed.

(2) Contested primaries. – No funds shall be distributed except as provided in G.S. 163-278.99B.

(3) Uncontested general elections. – No funds shall be distributed.

(4) Contested general elections. – The amount of funds to be distributed to a candidate is the average amount of campaign-related expenditures made in the general election by all candidates who won the immediately preceding three general elections for that office, rounded to the nearest one thousand dollars ($1,000), but not less than three hundred thousand dollars ($300,000). The distribution amount shall be reduced by an amount equal to the amount equal to the amount raised in qualifying contributions after the day of the primary. For purposes of this subsection, "campaign-related expenditures" does not include loan repayments and contributions to a candidate, political committee, or political party. For purposes of this subsection, expenditures are made in the general election if they are required to be reported on the third and fourth quarterly reports.

(c) Method of Fund Distribution. – The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding, and the candidate may raise additional money in the same manner as a nonparticipating candidate for the same office up to the unfunded amount of the candidate's eligible funding.

"**§ 163-278.99A. Reporting requirements.**

(a) Reporting by Noncertified Candidates and Other Entities. – Any nonparticipating candidate with a certified opponent shall report total contributions received to the Board by facsimile machine or electronically within 24 hours after the total amount of contributions received exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163-278.96(17). Any entity making independent expenditures in support of or in opposition to a certified candidate, or in support of a candidate opposing a certified candidate, or paying for electioneering communications referring to one of those candidates, shall report the total funds received, spent, or obligated for those expenditures or payments to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures or electioneering communications exceeds five thousand dollars ($5,000). After the initial 24-hour filing, the nonparticipating candidate or other reporting entity shall comply

with an expedited reporting schedule. The schedule and forms for reports required by this subsection shall ~~[be]~~ be supplied by the Board.

(b) Reporting by Participating and Certified Candidates. – Notwithstanding other provisions of law, participating and certified candidates shall report any money received and all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. Upon the filing of a final report for any losing primary election, special election, or general election, each candidate who has revenues from the Fund remaining unspent shall return those revenues to the Board. In developing these procedures, the Board shall utilize existing campaign reporting procedures wherever practicable.

(c) Timely Access to Reports. – The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information.

"§ 163-278.99B. Matching funds.

(a) When Matching Funds Become Available. – When any report or group of reports shows that "funds in opposition to a certified candidate or in support of an opponent to that candidate" as described in this section exceed the trigger for matching funds as defined in G.S. 163-278.96(17), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. "Funds in opposition to a certified candidate or in support of an opponent to that candidate" shall be equal to the sum of subdivisions (1) and (2) as follows:

(1) The greater of the following:

a. Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one nonparticipating opponent of a certified candidate. Where a certified candidate has more than one nonparticipating opponent, the measure shall be taken from the nonparticipating candidate showing the highest relevant dollar amount.

b. The funds distributed in accordance with G.S. 163-278.99(b) to a certified opponent of the certified candidate.

(2) The aggregate total of all expenditures and payments reported in accordance with G.S. 163-278.99A(a) of entities making independent expenditures or electioneering communications in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Matching Funds ~~in Contested Primary.~~ Before Date of Primary. – Total matching funds to a certified candidate ~~in a contested~~ before the date of the primary shall be limited to an amount equal to the maximum qualifying contributions for a candidate with a contested primary. Matching funds are available to a certified candidate with an opponent in the primary or to a certified candidate who is clearly referred to in expenditures reportable under G.S. 163-278.99A made in opposition to that candidate.

(c) Limit on Matching Funds in Contested General Election. – Total matching funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163-278.99(b)(4).

(d) Determinations by Board. – In the case of electioneering communications, the Board shall determine which candidate, if any, is entitled to receive matching funds as a result of the communication. The Board shall issue matching funds based on the communication only if it ascertains that the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. In making its determination, the Board shall not consider evidence external to the communication itself of the intent of the sponsor or the effect of the communication. The Board shall notify each candidate it determines is entitled to receive matching funds based on those communications, the sponsor of those communications, and any candidate who is an opponent of the candidate it determines is

entitled to the matching funds. The Board shall give the sponsor of the communication and any opposing candidate an adequate opportunity to rebut the determination of the Board. In considering the rebuttal, all candidates in the race and the sponsor shall be given adequate and equal opportunity to be heard. The Board shall adopt procedures for implementing this subsection, balancing in those procedures adequacy of opportunity to rebut and adequacy and equality of opportunity to be heard on the rebuttal with the need to expedite the decision on awarding matching funds. The Board shall distribute the matching funds, if any, at the conclusion of its process.

(e) Proportional Measuring of Multicandidate Communications. – In calculating the amount of matching funds a certified candidate is eligible to receive under this section, the Board shall include the proportion of expenditures, obligations, or payments for multicandidate communications that pertains to the candidate.

(f) No Matching Funds for Communications Supporting or Opposing All Candidates. – No matching funds are available under this section as a result of a communication that supports all candidates for the same office or opposes all candidates for the same office.

"**§ 163-278.99C. Unaffiliated and new-party candidates.**

Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the same amounts and at the same time as specified in G.S. 163-278.99. For unaffiliated candidates and new-party candidates not certified to appear on the ballot by noon on the deadline set in G.S. 163-106(c) for candidate filing in the election year, the deadline for seeking certification to receive revenue from the Fund is noon on the first business day of July of the election year.

"**§ 163-278.99D. Enforcement by the Board; civil penalty.**

In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation or three times the amount of any financial transactions involved in the violation, whichever is greater. In addition to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the Board makes a determination that a violation of this Article has occurred, the Board shall calculate and assess the amount of the civil penalty and shall notify the entity that is assessed the civil penalty of the amount that has been assessed. The Board shall then proceed in the manner prescribed in G.S. 163-278.34. In determining whether or not a candidate is in violation of this Article, the Board may consider as a mitigating factor any circumstances out of the candidate's control.

"**§ 163-278.99D.1. Enforcement and administration.**

(a) Enforcement by the Board. – The Board, with the advice of the Advisory Council for the Public Campaign Fund established by G.S. 163-278.68, shall administer the provisions of this Article.

(b) Appeals. – The initial decision on an issue concerning qualification, certification, or distribution of funds under this Article shall be made by the Executive Director of the Board. The procedure for challenging that decision is as follows:

(1) An individual or entity aggrieved by a decision by the Executive Director of the Board may appeal to the full Board within three business days of the decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five business days after an appeal is properly made, and after due notice is given to the parties, the Board shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the decision of the Executive Director was improper. The Board shall rule on the appeal within three business days after the completion of the hearing.

(c) Board to Adopt Procedures and Issue Opinions. – The Board shall adopt procedures and issue opinions to ensure effective administration of this Article. Such procedures and opinions shall include, but not be limited to, procedures for obtaining qualifying contributions, certification of candidates, addressing circumstances involving special elections, vacancies, recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance with this Article. The Board shall adopt procedures for the distribution of matching money that further the purpose and avoid the subversion of G.S. 163-278.99B. For races involving special elections, recounts, vacancies, withdrawals, or replacement candidates, the Board shall establish procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues. Where applicable, the Board shall adapt the provisions of G.S. 163-278.64A. The Board shall fulfill each of these duties in consultation with the Advisory Council on the Public Campaign Fund.

(d) Report to the Public. – The Advisory Council for the Public Campaign Fund shall issue a report by March 1, 2013, and every two years thereafter that evaluates and makes recommendations about the implementation of this Article and the feasibility of expanding its provisions to include other candidates for State office based on the experience of the Fund and the experience of similar programs in other states. The Advisory Council shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates receiving money from the Fund but that does not meet the definition of "independent expenditures."

"**§ 163-278.99E. Voter education.**

(a) Voter Guide. – The Board shall publish a Voter Guide that explains the functions of ~~office as defined in G.S. 163-278.96(12) and the laws concerning the election~~ all 10 offices of the Council of State, the purpose and function of the Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The State Board of Elections shall maintain a list of the addresses from which mailed Voter Guides are returned as undeliverable. That list shall be available for public inspection. The distribution shall occur no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the primary and no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the general election.

(b) Candidate Information. – The Voter Guide shall include information concerning all candidates for ~~office as defined in G.S. 163-278.96(12),~~ all 10 of the offices of the Council of State, as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

(1) Place of residence.
(2) Education.
(3) Occupation.
(4) Employer.
(5) Previous elective offices held.
(6) ~~Endorsements, limited to 50 words.~~ Endorsements. Concerning endorsements, the Board shall send to the candidates instructions as follows: "In order to have an endorsement published, you must provide written confirmation to the Board from the endorsing person or organization that you received that person's or organization's endorsement."
(7) Candidate ~~statement, limited to 150 words.~~ Statement. Concerning that statement, the Board shall send to the candidates instructions as follows: "Your statement may include information such as your qualifications, your endorsements, why you would make a good elected official, what

distinguishes you from your opponent(s), and any other information relevant to your candidacy. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language. The candidate shall have three days to resubmit the candidate statement if the Board rejects a portion of the statement."

The entire entry for a candidate shall be limited to 250 words.

(c) Disclaimer. – The Voter Guide shall contain the following statement: "Statements by candidates do not express or reflect the opinions of the State Board of Elections."

(d) Relationship to the Judicial Voter Guide. ~~The Board may~~ Whenever possible, the Board shall publish the Voter Guide in conjunction with the Judicial Voter Guide described in G.S. 163-278.69."

SECTION 2. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 3. Except as otherwise provided in this act, this act is effective when it becomes law.

SENATE PCS 966:
Expanded Voter-Owned Elections

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 11, 2009
Introduced by:	Sen. Nesbitt	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to First Edition S966-CSST-32		Committee Counsel

SUMMARY: Senate Bill 966 expands the public campaign financing program to cover all Council of State offices except Governor and Lieutenant Governor, and make other changes to the details of the program.

CURRENT LAW: North Carolina has two public campaign financing programs that follow the "Clean Elections" model adopted in Maine, Arizona, and Connecticut. One program covers all elections for State Supreme Court and Court of Appeals, and is commonly referred to as the 'Public Campaign Financing Fund'. That was enacted in 2002 and has been used in the elections of 2004, 2006, and 2008. The second is a pilot program, commonly referred to as the 'Voter-Owned Elections Act,' that covers elections for 3 Council of State offices – Auditor, Commissioner of Insurance, and Superintendent of Public Instruction. That was enacted in 2007 and was used in the 2008 election.

Although both programs cover statewide offices, the judicial program covers only nonpartisan elections, and the Council of State program covers only partisan elections.

brief, both programs work as follows: Candidates qualify for the program by pledging to abide by contribution id spending limits and by raising a certain amount in "qualifying contributions," small amounts given by individual voters. The basic public grants from the Fund do not come until after the primary, and with some exceptions the candidates are limited in their spending to the amount of those grants and the qualifying contributions. If participating candidates are faced with opponents or independent expenditures or electioneering communications targeted at them, in primary or general election, that go beyond what they can spend, the Fund provides "matching funds" with which those candidates can defend themselves.

The programs also require the State Board of Elections to produce and distribute a Voter Guide to as many voting-age NC residents as possible. The Guide contains information about the affected elections and space for candidates to present themselves without cost.

The judicial program has been financed mainly with taxpayer checkoffs on the NC Income Tax form and by a $50 surcharge on attorney membership fees. The Council of State program has been financed mainly with direct appropriations from the General Fund.

PCS ANALYSIS:

The proposed committee substitute for Senate Pcs 966 expands 'Voter-Owned Elections Act' from the three currently covered offices to include the additional five offices of Attorney General, Treasurer, Secretary of State, and Commissioners of Agriculture and Labor. The pcs would also clarify which council of state offices would be eligible to participate if the Fund is not fully funded on August 1 of the year prior to an election.

The pcs also makes the following changes to the workings of the Council of State program:

1. **Write-ins.** The pcs clarifies that a write-in candidate is not eligible to participate.
2. **Qualifying Contributions.** The pcs makes several changes to the provisions on qualifying contributions, which must be raised from registered NC voters in amounts between $10 and $200:
   - *Method of Payment.* Currently, qualifying contributions may be accepted only by check or money order.

- The pcs allows acceptance by any non-cash method otherwise allowed for contributions, notable including credit cards and Pay Pal.

- *Minimums*. Currently, to qualify a candidate must raise qualifying contributions from at least 750 individuals, and those qualifying contributions must reach a dollar amount that is at least 25 times the filing fee for the office sought. For the Council of State offices covered in 2008, this amounted to about $30,000. At least one candidate who got qualifying contributions from plenty of voters nonetheless missed the dollar threshold.
  - The pcs would change that formula to require contributions from at least 900 voters and add 100 voters to that number for every $100,000 over $300,000 that the candidate would be entitled to receive in grants for the office. (See below for the different grant amounts, designed to recognize that some Council of State offices cost more to run for than others.)
  - The pcs changes the threshold dollar amount of qualifying contributions to equal $20 times the minimum number of voters from whom qualifying contributions must be raise. So, a candidate for an office in the lower grant range would have to raise $18,000 from at least 900 voters.
- *Maximums*. Currently, the maximum of qualifying contributions that may be raised is different for a candidate with no primary than for a candidate with a contested primary. For a candidate with no primary, the maximum qualifying contributions equals 100 times the filing fee for the office, and for a candidate with a contested primary it is 200 times the filing fee for the office.
  - The pcs eliminates the filing fee as a measure, as with the minimum. For a candidate with no primary, the maximum would be $100 times the minimum number of voters from whom qualifying contributions must received. If the candidate has a contested primary, the maximum would be $200 times the minimum number of voters from whom qualifying contributions must be received. A candidate for an office in the lower grant range with no primary could raise no more than $90,000 in qualifying contributions.
- *No Raffles*. Currently the law says that "no payment, gift, or anything of value shall be given in exchange for a qualifying contribution." An issue arose over whether a raffle ticket was something of value that could be given in exchange for a qualifying contribution. The State Board of Elections decided that raffle tickets might not be a thing of value, but that the prize would be, so the raffle idea was unworkable.
  - The pcs adds that "the opportunity to win anything of value" shall not be given in exchange for a qualifying contribution.
- *Multiple Contributions from Same Individual*. The pcs clarifies that multiple qualifying contributions from the same person can count as only one qualifying contribution, for purposes meeting the threshold. Also, the pcs provides that multiple contributions from the same non-family member may not exceed $200.
- *Family Contributions*. Currently, the candidates themselves and their family members (spouse, parent, child, brother, sister) may each contribute up to $1,000 to the campaign. The question arose whether such contributions may be used to meet the qualifying contribution threshold.
  - The pcs states that up to $200 of a family member's contribution may be treated as a qualifying contribution.

3. **Grants from the Fund.** Currently, no basic grant money is distributed in a primary. In the general election, the basic grant is measured by the average amount of campaign-related expenditures by all candidates who won the immediately preceding 3 general elections for that office, but not less than $300,000.
   - The pcs provides that only expenditures made in the general elections will count toward that measurement. Expenditures are made in the general election if they must be reported in the 3rd or 4th quarterly reports. Also, the pcs says the result of the formula is rounded to the nearest $1,000.

4. **Matching Funds.** Currently, matching funds (once called "rescue funds") are available in a primary if a non-participating opponent outspends a participating candidate. This is the same as the judicial Fund -- no basic grant money for a primary, only matching funds. Matching funds are triggered in a primary by opposition spending that exceeds the maximum amount a participating candidate could raise in qualifying contributions. Matching funds are triggered in the general election by opposition spending that exceeds the participating candidate's basic grant entitlement from the Fund. The opposition spending is subject to special expedited reporting so the matching fund provision could be administered. Matching funds are available in amounts matching the opposition spending, up to twice the trigger amount.

   The pcs makes two changes to the law on matching funds:

   1. *In the Primary.* The pcs provides that matching funds are available in a primary to a certified candidate with a primary opponent or to a certified candidate who has no primary opponent but who is clearly targeted by opposition spending.
   2. *No Matching Funds for All-Candidate Ads.* In 2008 in the judicial program an ad was run supporting both the candidates in one Court of Appeals race. The State Board of Elections felt compelled by the law to give both of them matching funds, which they both turned down. The pcs provides that there will be no matching funds for a communication that supports all the candidates in the race or opposes all the candidates in the race.

5. **Enforcement.** Currently, both the judicial program and the Council of State program are enforced by the State Board of Elections, which has civil penalties available as remedies. For the judicial program, a statute provides for the State Board to be advised in enforcement by an Advisory Council, provides for an appeal procedure, and provides for specific State Board authority to adopt procedures and issue opinions. The Council of State program does not have that same statute.

   The pcs imports that statute into the Council of State program, using the same Advisory Council for both programs.

6. **Voter Guide.** Currently, the Voter Guide is supposed to explain the functions of the offices affected by the programs, and give space to provide information about themselves only to candidates for those offices. Within each candidate's space the candidate is given 50 words to present endorsements and 150 words to make a statement.

   The pcs expands the Voter Guide's coverage to all 10 offices in the Council of State, including Governor and Lieutenant Governor, which are not affected by the programs. The pcs would replace the word limits of 50 for endorsements and 150 for statement with one word cap of 250 words for the candidate's entire entry. That would include biographical information. The pcs would replace permissive language for the State Board to publish the Judicial and Council of State guides together with a mandate to do so whenever possible.

The pcs does not make any changes to funding mechanism for the program, and does not contain an appropriation.

EFFECTIVE DATE: When it becomes law. The first council of state races that would be covered would occur in 2012.

S966-SMST-35(CSST-32) v3

[2]cs Gilkeson substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 966

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

S966-AST-12 [v.1]

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

Date 5/12 ,2009

Senator Nesbitt

moves to amend the bill on page 8, lines 13-15 by rewriting those lines to read:

"(f) No Matching Funds for Certain Communications Involving All Candidates. – No matching funds are available under this section as a result of an expenditure that supports all candidates for the same office or opposes all candidates for the same office. No matching funds are available under this section as a result of an electioneering communication that the Board ascertains is susceptible of no reasonable interpretation other than as an appeal to vote for all candidates for the same office or to vote against all candidates for the same office." ".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

Attachment VII

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 966

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

S966-AST-13 [v.1]

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

Date 5/12 ,2009

Senator Rand

moves to amend the bill on page 10, lines 11-12 by inserting the following between those lines:

"**SECTION 1.5.** There is appropriated from the General Fund to the State Board of Elections the sum of two million dollars ($2,000,000) for the 2009-2010 fiscal year and the sum of seven million one hundred sixty thousand dollars ($7,160,000) for the 2010-2011 fiscal year for the implementation of this act.".

SIGNED Tony Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 817
PROPOSED COMMITTEE SUBSTITUTE S817-CSST-34 [v.1]

5/11/2009 11:43:29 PM

Short Title: Increase Child Support Collections. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE CHILD SUPPORT COLLECTIONS BY PERMITTING GREATER SENTENCING FLEXIBILITY FOR A PERSON WHO COMMITS CRIMINAL CONTEMPT BY FAILING TO COMPLY WITH AN ORDER TO PAY CHILD SUPPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 5A-12(a) reads as rewritten:

"(a) A person who commits criminal contempt, whether direct or indirect, is subject to censure, imprisonment up to 30 days, fine not to exceed five hundred dollars ($500.00), or any combination of the three, except ~~that~~ that:

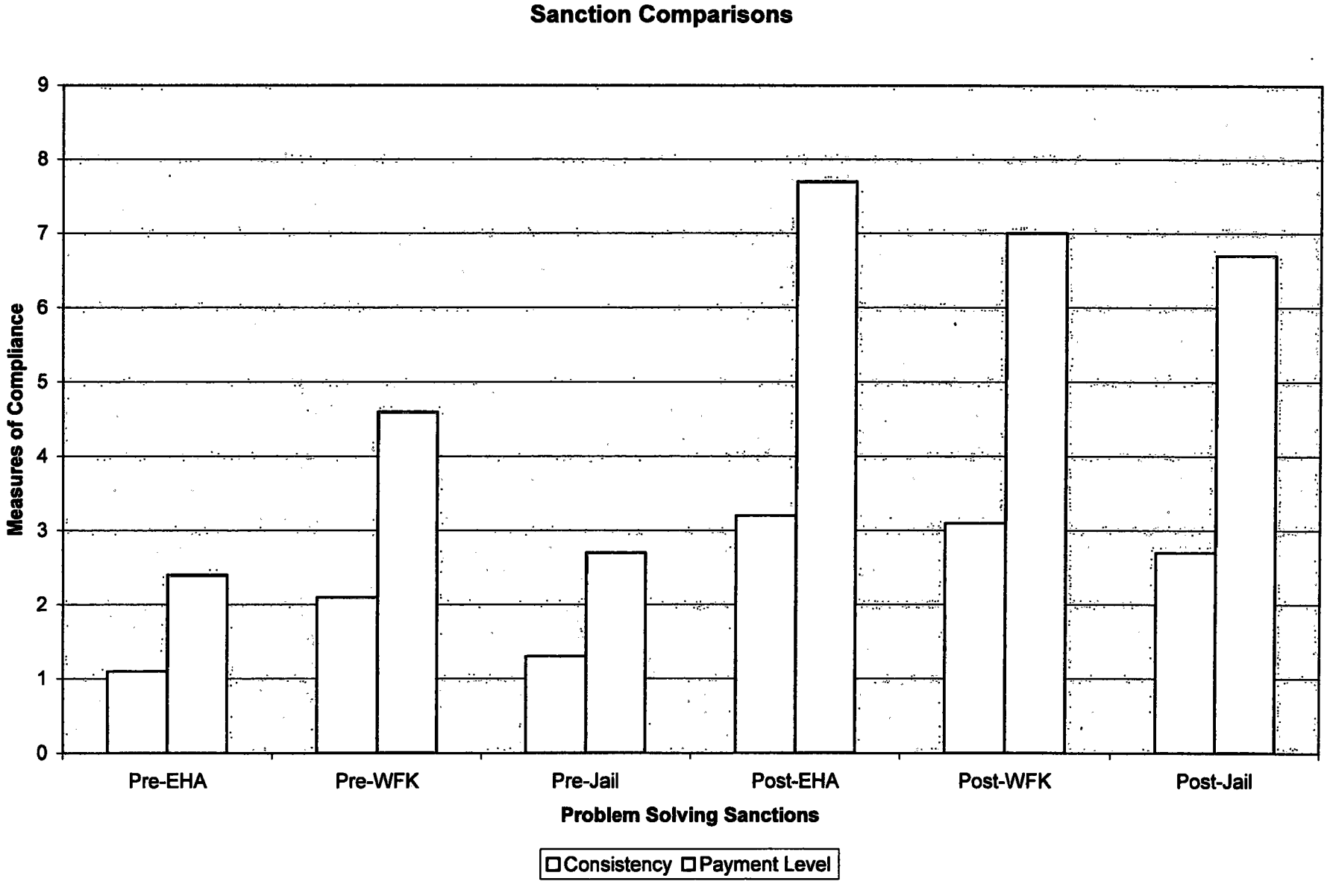
(1) ~~a~~A person who commits a contempt described in G.S. 5A-11(8) is subject to censure, imprisonment not to exceed 6 months, fine not to exceed five hundred dollars ($500.00), or any combination of the ~~three and~~ three;

(2) ~~a~~ A person who has not been arrested who fails to comply with a nontestimonial identification order, issued pursuant to Article 14 of ~~G.S.~~ Chapter 15A of the General Statutes is subject to censure, imprisonment not to exceed 90 days, fine not to exceed five hundred dollars ($500.00), or any combination of the ~~three~~ three; and

(3) A person who commits criminal contempt by failing to comply with an order to pay child support is subject to censure, imprisonment up to 30 days, fine not to exceed five hundred dollars ($500.00), or any combination of the three. However, a sentence of imprisonment up to 120 days may be imposed for a single act of criminal contempt resulting from the failure to pay child support, provided the sentence is suspended upon conditions reasonably related to the contemnor's payment of child support."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

Attachment IX



	Criminal Contempt	Civil Contempt
Statutory Reference	GS 5A-11 through 5A-17; GS 50-13.4(f)(9).	GS 5A-21 through 5A-25; GS 50-13.4(f)(9).
Purpose	To punish noncompliance with court order.	To coerce compliance with court order.
Basis for Contempt	Willful disobedience of court order requiring payment of child support. The court must find that obligor failed to pay court-ordered child support and that he had the ability to pay all or part of the support owed. Obligor's failure to pay support may have occurred at any time since entry of the order regardless of whether he still owes past-due support at the time of the contempt hearing.	Willful failure to comply with court order requiring payment of child support. The court must find that obligor was ordered to pay child support under valid court order, that order remains in effect, that obligor has failed to pay support as ordered, still owes past-due child support as of the time of the contempt hearing, and has the present ability to pay all or part of the support owed or take reasonable steps that would enable him to do so.
Motion and Order or Notice to Show Cause	Judicial official, without application or motion or finding of probable cause, may issue an order requiring obligor to appear and show cause why he should not be held in contempt.	Upon motion and affidavit of any person interested in enforcing the order and finding of probable cause to believe that obligor is in contempt, judicial official may issue an order requiring obligor to appear and show cause why he should not be held in contempt *or* notice that obligor will be held in contempt if he fails to appear and show cause why he should not be held in contempt. Alternatively, aggrieved party may serve motion, affidavit, and notice of hearing on obligor alleged to be in civil contempt.
Motion to Dismiss	Alleged contemnor may file motion to dismiss.	Alleged contemnor may file motion to dismiss.
Arrest for Failure to Appear	Judicial official may issue order for arrest of alleged contemnor based on sworn statement or affidavit and finding of probable cause that alleged contemnor will not appear at contempt hearing. Alleged contemnor is entitled to pre-trial release and may be required to post an appearance (not compliance) bond.	Judicial official may issue an order for arrest for failure to appear if writ of capias would have been appropriate. Alleged contemnor is entitled to pre-trial release and may be required to post an appearance (not compliance) bond.
Right to Counsel	Court may not incarcerate indigent person convicted of criminal contempt unless contemnor was represented by court-appointed counsel or waived right to counsel. Absent waiver, court must appoint counsel for an indigent defendant if incarceration is possible.	Court may not incarcerate indigent person found in criminal contempt unless contemnor was represented by court-appointed counsel or waived right to counsel. Absent waiver, court must appoint counsel for an indigent defendant if incarceration is possible.
Alleged Contemnor's Testimony	Alleged contemnor may not be compelled to be a witness against himself.	Absent a grant of immunity from criminal prosecution, alleged contemnor may assert right against self incrimination and refuse to testify, but court may draw adverse inference of fact from failure to testify.

	Criminal Contempt	Civil Contempt
Burden and Standard of Proof	Court is represented by prosecutor except when prosecutor has conflict of interest. Contempt must be proved beyond a reasonable doubt.	In contempt proceedings initiated by motion, affidavit, and notice of aggrieved party, burden of proof is on the aggrieved party. In contempt proceedings initiated by order or notice to show cause issued by judicial official, alleged contemnor has burden of presenting evidence to show that he is not in contempt. Burden of proof is probably preponderance of evidence.
Trier of Fact	District court judge; no right to jury trial (unless consecutive sentences exceed six months).	District court judge; no right to jury trial.
Findings of Fact	Court must make findings of fact, supported by evidence, sufficient to support conviction.	Court must make findings of fact, supported by evidence, on issues of willful failure to comply with court order and obligor's present ability to comply with order.
Relationship Between Civil and Criminal Contempt	Contemnor found guilty of criminal contempt may not be held in civil contempt for the same action. Order or judgment must clearly indicate if obligor is found in criminal or civil contempt.	Contemnor found in civil contempt may not be found guilty of criminal contempt for the same action. Order or judgment must clearly indicate if obligor is found in criminal or civil contempt.
Fine	May not exceed $500; may be imposed in lieu of or in addition to incarceration.	
Incarceration	An obligor convicted of criminal contempt may be sentenced to fixed term of incarceration, not to exceed 30 days, in lieu of or in addition to fine. Court may suspend sentence and place contemnor on probation. If a sentence for criminal contempt is suspended and the contemnor is placed on probation, the conditions of probation are not purge conditions. The contemnor's probation may be revoked and the sentence activated if the contemnor violates the conditions of probation. The judicial official who finds an obligor in criminal contempt may at any time terminate or reduce the contemnor's sentence if warranted by the contemnor's conduct and the ends of justice.	An obligor who is found in civil contempt may be incarcerated for as long as his contempt continues or until he complies with the conditions for purging his contempt. An obligor may avoid incarceration if he immediately complies with the purge conditions. An obligor may be incarcerated for civil contempt only if he is presently able, but unwilling, to comply immediately with the purge conditions. If the obligor is incarcerated, the sheriff or jailer may release him without further order from the court when he complies with the order or purge conditions. An incarcerated obligor may file a motion seeking his release. The motion must be directed to the judge who found him in contempt.
Purging Contempt	A person convicted of criminal contempt may not purge the contempt. The judicial official who finds an obligor in criminal contempt, however, may at any time terminate or reduce the contemnor's sentence if warranted by the contemnor's conduct and the ends of justice.	Order must specify how contemnor may purge contempt. Purge conditions must be related to obligor's compliance with the order and may not require the obligor to do something that is not within his present ability to do. Purge conditions that require the obligor to do something in the future are improper because they are not within the obligor's present ability and are not conditions related to the obligor's present ability to avoid or be released from incarceration.
Appeal	Contemnor may appeal within 10 days of judgment to superior court for trial de novo.	Aggrieved party may appeal within 30 days of judgment to NC Court of Appeals.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 440*
PROPOSED COMMITTEE SUBSTITUTE S440-CSST-33 [v.2]

5/11/2009 8:40:34 PM

Short Title: Establish Gestational Surrogacy Agreements. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT ESTABLISHING LAWS PERTAINING TO GESTATIONAL SURROGACY AGREEMENTS.

The General Assembly of North Carolina enacts:

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

"**Chapter 52D.**

"**Gestational Surrogacy Agreements.**

"**§ 52D-1. Definitions.**

The following definitions apply in this Chapter:

(1) Assisted reproduction. – A method of causing pregnancy through a medical procedure, including intrauterine insemination, in vitro fertilization and transfer of embryos, and intracytoplasmic sperm injection. The term does not include pregnancy caused by sexual intercourse.

(2) Donor. – An individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include a gestational carrier or an intended parent.

(3) Gestational carrier. – A woman, not an intended parent, who enters into a gestational surrogacy agreement to bear a child, whether or not she has any genetic relationship to the resulting child. The gestational carrier must be at least 21 years of age and have given birth to at least one child. For purposes of this definition, both a traditional surrogate and a gestational surrogate are gestational carriers.

(4) Gestational surrogacy agreement. – A contract between the intended parents and a gestational carrier that complies with G.S. 52D-2.

(5) Gestational surrogate. – A woman into whom an embryo, formed using eggs other than her own, is transferred.

(6) Intended parents. – The married couple who manifest the intent in a gestational surrogacy agreement to be legally bound as the mother and father of a child resulting from assisted reproduction.

(7) Traditional surrogate. – A woman who undergoes fertilization and insemination of her own eggs.

"**§ G.S. 52D-2. Gestational surrogacy agreement authorized.**

(a) A gestational carrier, her spouse if she is married, and the intended parents may enter into a written agreement for gestational surrogacy if all of the following apply:

(1) The gestational carrier agrees to pregnancy by means of assisted reproduction.

(2) The gestational carrier and her spouse, if she is married, agrees to relinquish all rights and duties as the parents of a child conceived through assisted reproduction at the time the order is entered under G.S. 52D-4.

(3) All donors agree to relinquish all rights and duties as the parent of a child conceived through assisted reproduction at the time the order is entered under G.S. 52D-4.

(3) The intended parents will become the parents of the child conceived through assisted reproduction immediately upon the birth of that child.

(b) A gestational surrogacy agreement shall be in writing and acknowledged by all parties before a notary public.

(c) A gestational surrogacy agreement is enforceable only if validated by a court as provided in G.S. 52D-3 before the gestational carrier becomes pregnant.

(d) A gestational surrogacy agreement may provide for payment of reasonable consideration, subject to the limitations of G.S. 52D-9.

(e) A gestational surrogacy agreement may not limit the right of the gestational carrier to make decisions to safeguard her health or the health of the embyro or fetus. However, a gestational surrogacy agreement may include either or both of the following provisions:

(1) An agreement by the gestational carrier to undergo all medical examinations, treatments, and fetal monitoring procedures that a physician recommends for the success of the pregnancy.

(2) An agreement by the gestational carrier to abstain from activities that the intended parents or the physician believes to be harmful to the pregnancy and future health of the child, including smoking, drinking alcohol, using drugs not authorized by a physician aware of the pregnancy, exposure to radiation, or any other activity proscribed by a health care provider.

"**§ 52D-3. Petition to validate agreement.**

(a) The intended parents and the gestational carrier may commence a proceeding in district court to validate a gestational surrogacy agreement if at least one of the petitioners has been a resident of this State for at least 90 days immediately preceding the filing of the petition.

(b) If the gestational carrier is married, her spouse shall be joined in the proceeding.

(c) The district court proceeding is commenced by the filing of a verified petition by the intended parents and the gestational carrier. A copy of the gestational surrogacy agreement shall be attached to the petition. Civil court costs shall be assessed against the petitioners.

(d) Upon the filing of the petition, the clerk of court shall schedule a hearing before a district court judge as soon as possible. At least 10 days notice of hearing shall be given to all persons, if any, who are parties to the gestational agreement, but are not joined as petitioners in the proceeding. The notice of hearing shall be in accordance with G.S. 1A-1, Rule 5 of the North Carolina Rules of Civil Procedure. No service of process or notice of hearing is otherwise required.

"**§ 52D-4. Hearing to validate gestational surrogacy agreement.**

(a) The court may issue an order validating the gestational surrogacy agreement if after hearing testimony from each party to the gestational surrogacy agreement and considering any other relevant evidence, the court finds:

(1) The requirements of G.S. 52D-2 and G.S. 52D-3 have been satisfied and the parties have submitted to the jurisdiction of the court.

(2) Both the intended parents and the gestational carrier, independently, have consulted legal counsel and been advised regarding the terms of the

gestational surrogacy agreement and the potential legal consequences of the gestational surrogacy agreement.

(3) All parties have voluntarily entered into the agreement and understand its terms and all parties continue to agree to all the terms of the gestational surrogacy agreement.

(4) All donors, if any, have relinquished all rights and duties as parents of the child to be conceived through assisted reproduction.

(5) Adequate provision has been made for all healthcare expenses associated with the gestational surrogacy agreement until the birth of the child and for a reasonable time thereafter, including responsibility for those expenses if the agreement is terminated.

(6) The consideration, if any, paid or to be paid to the gestational carrier is reasonable, in accordance with G.S. 52D-9.

(7) Each party understands the procedure for termination of the gestational surrogacy agreement pursuant to G.S. 52D-5 and the consequences of terminating the agreement.

(b) If the requirements of subsection (a) of this section are satisfied, a court shall issue an order validating the gestational surrogacy agreement and declaring that the intended parents will be the only parents of a child born as a result of the agreement.

(c) A judicial hearing held pursuant to this Chapter shall be in closed court.

"**§ 52D-5. Termination of gestational surrogacy agreement.**

(a) After issuance of an order under G.S. 52D-4, but before the gestational carrier becomes pregnant by means of assisted reproduction, the gestational carrier, her spouse if she is married, or an intended parent may terminate the gestational surrogacy agreement by giving notice of termination in writing to all other parties and the court.

(b) An individual who terminates a gestational surrogacy agreement shall file with the court a copy of the written notice of the termination and certification that the termination has been served on all other parties to the agreement. Service of notice shall be in accordance with G.S. 1A-1, Rule 5 of the North Carolina Rules of Civil Procedure. Upon receipt of the notice, the court shall vacate the order issued under G.S. 52D-4.

(c) No party to a gestational surrogacy agreement nor the spouse of any party is liable for damages resulting from termination of the agreement unless liability is expressly assumed in the gestational surrogacy agreement. Under no circumstances shall a gestational carrier or her spouse be liable to the intended parents for terminating the agreement in accordance with this section.

(d) On motion of any party to the agreement, the court may terminate the gestational surrogacy agreement at any time before the birth of the child if the court finds that termination is appropriate under the circumstances. However, the court shall not terminate the agreement after the court has validated the agreement and the gestational carrier has become pregnant, except upon terms expressly agreed upon by the parties in the validated gestational surrogacy agreement. If the court terminates the agreement after the gestational carrier becomes pregnant, parentage of the child born to the gestational carrier shall be determined as if the gestational surrogacy agreement had not been validated and in accordance with G.S. 52D-8.

"**§ 52D-6. Parentage under validated gestational surrogacy agreement.**

(a) Any time after thirty weeks of gestation and after the agreement has been validated by the court and no later than 10 days after the birth, the intended parents shall file notice with the court that a child will be or has been born to the gestational carrier within 300 days after assisted reproduction. The court shall issue an order:

(1) Confirming that the intended parents are the only mother and father of the child;

(2) Ordering that the child be surrendered to the intended parents, if necessary; and

(3) Directing that the birth certificate of the child name the intended parents as the only mother and father of the child.

(b) If the parentage of a child born to a gestational carrier is alleged not to be the result of assisted reproduction, the court shall order genetic testing to determine whether the child is the result of assisted reproduction. If the child's birth is not the result of assisted reproduction, parentage of the child shall be determined as if the surrogacy agreement had not been validated and in accordance with G.S. 52D-8. However, no action to challenge the rights of parentage established pursuant to this Chapter shall be commenced after 12 months from the date of birth of the child.

(c) If an intended parent fails to file notice required under subsection (a) of this section, the gestational carrier, any interested person, or a county department of social services, may file notice with the court that a child has been born to the gestational carrier within 300 days after assisted reproduction. Upon proof of a court order issued pursuant to G.S. 52D-3 validating the gestational surrogacy agreement, the court shall order that the intended parents are the only parents of the child and are financially responsible for the child. The court shall direct that the birth certificate of the child name the intended parents as the only parents of the child.

"**§ 52D-7. Gestational surrogacy agreement; effect of subsequent marriage.**

After the court has issued an order under this Chapter, the subsequent marriage of the gestational carrier shall not affect the validity of a gestational surrogacy agreement. Notwithstanding G.S. 130A-101, the gestational surrogacy agreement shall not require the consent of the gestational carrier's legal spouse, nor shall her legal spouse be presumed the father of the resulting child.

"**§ 52D-8. Effect of nonvalidated gestational surrogacy agreement.**

(a) A gestational surrogacy agreement that is not judicially validated pursuant to this Chapter is not enforceable and shall not create parentage rights in any party.

(b) If a birth results under a gestational surrogacy agreement that is not judicially validated pursuant to G.S. 52D-4, the gestational carrier shall be the mother of the child and paternity shall be determined in accordance with State law.

(c) Any intended parent who is a party to a nonvalidated gestational surrogacy agreement may be held liable for support of the resulting child, with the amount of support to be set in accordance with Chapter 50 of the General Statutes.

"**§ 52D-9. Compensation.**

(a) The consideration, if any, paid to a gestational carrier shall be reasonable and negotiated in good faith between the parties.

(b) Compensation may not be conditioned upon the health or characteristics of any fetus, embryo, or child produced as the result of assisted reproduction.

"**§ 52D-10. Confidentiality of court records.**

(a) All court records created or filed pursuant to a court proceeding under this Chapter are confidential and may not be disclosed, except upon order of the court finding that disclosure is necessary to protect the interest of any child born as a result of the gestational surrogacy agreement or otherwise necessary in the interest of justice. For purposes of this section, 'court records' mean any petition, affidavit, transcript or notes of testimony, deposition, written or recorded response to discovery request, report, decree, order, judgment, correspondence, or document of any kind relating to a court proceeding under this Chapter.

(b) When an order issued pursuant to G.S. 52D-6 becomes final, all records and indices of records on file with the court shall be retained permanently and sealed. The sealed records shall not be open for inspection to any person, except upon order of the court after finding inspection is necessary to protect the interest of any child born as a result of the gestational surrogacy agreement or otherwise necessary in the interest of justice.

(c) Within 10 days following the entry of an order pursuant to G.S. 52D-6, the clerk of superior court shall transmit a copy of the order to the State Registrar if the child was born in this State. If the child was born in another state, the petitioner shall forward the order to the appropriate official responsible for issuing birth certificates in that state. The clerk of court shall retain all original court orders entered pursuant to this Chapter.

(d) Nothing in this section shall be construed to prevent a court official or a court employee or state employee from inspecting permanent, confidential records or sealed records for the purpose of discharging an obligation related to his or her official duties or responsibilities."

SECTION 2. G.S. 48-3-701 reads as rewritten:

"Part 7. Relinquishment of Minor for Adoption.

§ 48-3-701. Individuals who may relinquish minor; timing.

(a) A parent or guardian may relinquish all parental rights or guardianship powers, including the right to consent to adoption, to an agency. If both parents are married to each other and living together, both parents must act jointly in relinquishing a child to an agency.

(b) The mother of a minor child may execute a relinquishment at any time after the child is born but not sooner. A man whose consent is required under G.S. 48-3-601 may execute a relinquishment either before or after the child is born.

(c) A guardian may execute a relinquishment at any time.

(d) A donor, as defined in G.S. 52D-1, and a gestational carrier, as defined in G.S. 52D-1, relinquish any and all parental rights to the resulting child at the time the court enters its order under G.S. 52D-4."

SECTION . This act becomes effective October 1, 2009 and applies to gestational surrogacy agreements entered into on or after that date.

SENATE BILL 440:
Establish Gestational Surrogacy Agreements

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 11, 2009
Introduced by:	Sen. Rand	**Prepared by:**	R. Erika Churchill Committee Counsel
Analysis of:	PCS to First Edition S440-CSST-33		

SUMMARY: ***Senate Bill 440 would establish a new Chapter 52D "Gestational Surrogacy Agreements" to authorize and establish parameters for the creation of gestational surrogacy agreements.***

[As introduced, this bill was identical to H510, as introduced by Reps. Glazier, Ross, Weiss, Goodwin, which is currently in House Health, if favorable, Judiciary II.]

CURRENT LAW:

BILL ANALYSIS: The proposed committee substitute for Senate Bill 440 would establish a new Chapter 52D "Gestational Surrogacy Agreements," setting forth the following provisions:

- G.S. 52D-1. Definitions for relevant terminology, including – assisted reproduction, gestational carrier, gestational surrogacy agreement, gestational surrogate, intended parents, and traditional surrogate.
- G.S. 52D-2. Authorizes creation of a written gestational surrogacy agreement between a gestational carrier and the intended parents if all of the following apply:
  - The gestational carrier agrees to pregnancy by assisted reproduction.
  - The gestational carrier and her spouse (if married) and the donor relinquish all rights and duties as parents of the child.
  - The intended parents will become parent of the child immediately upon birth.
- G.S. 52D-3. A gestational surrogacy agreement is enforceable only if validated by a court before the gestational carrier becomes pregnant.
- G.S. 52D-4. Establishes a civil court procedure to petition for and receive a court-validated gestational surrogacy agreement if all of the following requirements have been met:
  - The intended parents and the gestational carrier, independently, have consulted legal counsel and been advised of the terms and legal consequences of the agreement.
  - All parties have voluntarily entered into the agreement.
  - All donors have relinquished all parental rights.
  - Provisions have been made for responsibility for all related health care expenses.
  - Any consideration paid to the gestational carrier is reasonable.
  - Each party understands procedures for and consequences of termination of the agreement.
- Provides for termination of the agreement before the gestational carrier has become pregnant, and after validation of the agreement and after pregnancy but before the birth of the child, only if determined by the court to be appropriate under the circumstances and done according to terms expressly agreed upon by the parties in a validated gestational surrogacy agreement.

- Directs intended parents to file notice with the court that a child has been or will be born to a gestational carrier within 300 days after assisted reproduction, but not later than 10 days after the birth. Directs the court to issue an order confirming that the intended parents are the only parents of the child; ordering that the child be surrendered to the intended parents, if necessary; and directing that the child's birth certificate name the intended parents as the only parents of the child.
- Directs the court to order genetic testing if parentage is alleged to not be the result of assisted reproduction, and if it is not, provides that parentage will then be determined in accordance with State law. Limits challenges of rights of parentage to within 12 months of the birth of the child.
- Provides that compensation paid to the gestational carrier must be reasonable and negotiated in good faith, and may not be conditioned on the health or characteristics of the child.
- Provides that "...all court records created or filed pursuant to a court proceeding under this Chapter are confidential and may not be disclosed, except upon order of the court finding that disclosure is necessary to protect the interest of any child born as a result of the gestational surrogacy agreement or otherwise necessary in the interest of justice.
-

EFFECTIVE DATE: This act becomes effective October 1, 2009 and applies to gestational surrogacy agreements entered into on or after that date.

S440-SMST-36(CSST-33) v1

Ben Popkin substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S **D**

SENATE BILL 920
PROPOSED COMMITTEE SUBSTITUTE S920-CSSA-42 [v.1]

Short Title: Probation Reform. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW PROBATION OFFICERS TO ACCESS OFFENDERS' JUVENILE RECORDS, TO MAKE WARRANTLESS SEARCHES AND DRUG SCREENING REGULAR CONDITIONS OF SUPERVISION, TO ADD ADDITIONAL CONTROLLING MEASURES FOR OFFENDERS SUBJECT TO INTERMEDIATE PUNISHMENT, AND TO MAKE CLARIFYING AMENDMENTS TO STREAMLINE PROCEDURES FOR SUPERVISION OF OFFENDERS IN THE COMMUNITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-3000 reads as rewritten:

"**§ 7B-3000. Juvenile court records.**

(a) The clerk shall maintain a complete record of all juvenile cases filed in the clerk's office to be known as the juvenile record. The record shall include the summons and petition, any secure or nonsecure custody order, any electronic or mechanical recording of hearings, and any written motions, orders, or papers filed in the proceeding.

(b) All juvenile records shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the court. Except as provided in subsection (c) of this section, the following persons may examine the juvenile's record and obtain copies of written parts of the record without an order of the court:

(1) The juvenile;

(2) The juvenile's parent, guardian, or custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;

(3) The prosecutor; ~~and~~

(4) Court ~~counselors.~~counselors; and

(5) Probation officers in the Division of Community Corrections of the Department of Correction, as provided in subsection (e1) of this section and in G.S. 15A-1341(e).

Except as provided in subsection (c) of this section, the prosecutor may, in the prosecutor's discretion, share information obtained from a juvenile's record with law enforcement officers sworn in this State, but may not allow a law enforcement officer to photocopy any part of the record.

(c) The court may direct the clerk to "seal" any portion of a juvenile's record. The clerk shall secure any sealed portion of a juvenile's record in an envelope clearly marked "SEALED: MAY BE EXAMINED ONLY BY ORDER OF THE COURT", or with similar notice, and

shall permit examination or copying of sealed portions of a juvenile's record only pursuant to a court order specifically authorizing inspection or copying.

(d) Any portion of a juvenile's record consisting of an electronic or mechanical recording of a hearing shall be transcribed only when notice of appeal has been timely given and shall be copied electronically or mechanically, only by order of the court. After the time for appeal has expired with no appeal having been filed, the court may enter a written order directing the clerk to destroy the recording of the hearing.

(e) The juvenile's record of an adjudication of delinquency for an offense that would be a felony if committed by an adult may be used by law enforcement, the magistrate, and the prosecutor for pretrial release and plea negotiating decisions.

(e1) During any time in which a person is subject to probation supervision under Article 82 of Chapter 15A of the General Statutes, that person's juvenile record may be examined without a court order by the probation officer in the Division of Community Corrections assigned to supervise the person.

(f) The juvenile's record of an adjudication of delinquency for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be used in a subsequent criminal proceeding against the juvenile either under G.S. 8C-1, Rule 404(b), or to prove an aggravating factor at sentencing under G.S. 15A-1340.4(a), 15A-1340.16(d), or 15A-2000(e). The record may be so used only by order of the court in the subsequent criminal proceeding, upon motion of the prosecutor, after an in camera hearing to determine whether the record in question is admissible.

(g) Except as provided in subsection (d) of this section, a juvenile's record shall be destroyed only as authorized by G.S. 7B-3200 or by rules adopted by the Administrative Office of the Courts."

SECTION 2. G.S. 7B-3100(a) reads as rewritten:

"(a) The Department, after consultation with the Conference of Chief District Court Judges, shall adopt rules designating certain local agencies that are authorized to share information concerning juveniles in accordance with the provisions of this section. Agencies so designated shall share with one another, upon request and to the extent permitted by federal law and regulations, information that is in their possession that is relevant to any assessment of a report of child abuse, neglect, or dependency or the provision or arrangement of protective services in a child abuse, neglect, or dependency case by a local department of social services pursuant to the authority granted under Chapter 7B of the General Statutes or to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent and shall continue to do so until the protective services case is closed by the local department of social services, or if a petition is filed when the juvenile is no longer subject to the jurisdiction of juvenile court. Agencies that may be designated as "agencies authorized to share information" include local mental health facilities, local health departments, local departments of social services, local law enforcement agencies, local school administrative units, the district's district attorney's office, the Department of Juvenile Justice and Delinquency Prevention, and the Office of Guardian ad Litem Services of the Administrative Office of the ~~Courts.~~ Courts, and the Division of Community Corrections of the Department of Correction. Any information shared among agencies pursuant to this section shall remain confidential, shall be withheld from public inspection, and shall be used only for the protection of the juvenile and others or to improve the educational opportunities of the juvenile, and shall be released in accordance with the provisions of the Family Educational and Privacy Rights Act as set forth in 20 U.S.C. § 1232g. Nothing in this section or any other provision of law shall preclude any other necessary sharing of information among agencies. Nothing herein shall be deemed to require the disclosure or release of any information in the possession of a district attorney."

SECTION 3. G.S. 15A-1341 is amended by adding a new subsection to read:

"(e) Review of Defendant's Juvenile Record. – The probation officer assigned to the defendant may examine the defendant's juvenile record in a manner consistent with G.S. 7B-3000(e1)."

SECTION 4. G.S. 15A-1340.11 reads as rewritten:

"**§ 15A-1340.11. Definitions.**

The following definitions apply in this Article:

...

(4a) House arrest with electronic monitoring. – Probation in which the offender is required to remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the ~~condition electronically.~~ condition.

(5) Intensive ~~probation.~~supervision. – Probation that requires the offender to submit to ~~supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c), and to comply with the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires~~ rules adopted by the Division of Community Corrections for intensive supervision, including, but not limited to, multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(6) Intermediate punishment. – A sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions:

a. Special probation as defined in G.S. 15A-1351(a).
b. Assignment to a residential program.
c. House arrest with electronic monitoring.
d. Intensive ~~probation.~~supervision.
e. Assignment to a day-reporting center.
f. Assignment to a drug treatment court program.

...."

SECTION 5. G.S. 143B-262(c) reads as rewritten:

"(c) The Division of Community Corrections of the Department shall establish ~~within the Division of Community Corrections a program of Intensive Supervision. This program shall provide intensive supervision for probationers, post release supervisees, and parolees who require close supervision in order to remain in the community pursuant to a community penalties plan, community work plan, community restitution plan, or other plan of rehabilitation. The intensive supervision program shall be available to both felons and misdemeanants. Each offender shall be required to comply with the rules adopted for the Program as well as~~ rules for intensive supervision consistent with the requirements specified in G.S. 15A-1340.11(5)."

SECTION 6. G.S. 153A-230.2(a) reads as rewritten:

"(a) There is created in the Office of State Budget and Management the County Satellite Jail/Work Release Unit Fund to provide State grant funds for counties or groups of counties for construction of satellite jail/work release units for certain misdemeanants who receive active sentences. A county or group of counties may apply to the Office for a grant under this section. The application shall be in a form established by the Office. The Office shall:

(1) Develop application and grant criteria based on the basic requirements listed in this Part,
(2) Provide all Boards of County Commissioners and Sheriffs with the criteria and appropriate application forms, technical assistance, if requested, and a proposed written agreement,
(3) Review all applications,
(4) Select grantees and award grants,
(5) Award no more than seven hundred fifty thousand dollars ($750,000) for any one county or group of counties except that if a group of counties agrees to jointly operate one unit for males and one unit for females, the maximum amount may be awarded for each unit,
(6) Take into consideration the potential number of misdemeanants and the percentage of the county's or counties' misdemeanant population to be diverted from the State prison system,
(7) Take into consideration the utilization of existing buildings suitable for renovation where appropriate,
(8) Take into consideration the timeliness with which a county proposes to complete and occupy the unit,
(9) Take into consideration the appropriateness and cost effectiveness of the proposal,
(10) Take into consideration the plan with which the county intends to coordinate the unit with other community service programs such as intensive ~~probation,~~supervision, community penalties, and community service.

When considering the items listed in subdivisions (6) through (10), the Office shall determine the appropriate weight to be given each item."

SECTION 7. G.S. 164-42(a) reads as rewritten:

"(a) The Commission shall recommend structures for use by a sentencing court in determining the most appropriate sentence to be imposed in a criminal case, including:

(1) Imposition of an active term of imprisonment;
(2) Imposition of a term of probation;
(3) Suspension of a sentence to imprisonment and imposition of probation with conditions, including the appropriate probation option or options, including house arrest, regular probation, intensive ~~probation,~~supervision, restitution, and community service;
(4) Based upon the combination of offense and defendant characteristics in each case, the presumptively appropriate length of a term of probation, or a term of imprisonment;
(5) Ordering multiple sentences to terms of imprisonment to run concurrently or consecutively;
(6) For a sentence to probation without a suspended sentence to imprisonment, the maximum term of confinement to be imposed if the defendant violates the conditions of probation."

SECTION 8.(a) G.S. 15A-1343(b) reads as rewritten:

"(b) Regular Conditions. – As regular conditions of probation, a defendant must:

(1) Commit no criminal offense in any jurisdiction.
(2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.
(3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer

and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

(4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

(5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.

(6) Pay a supervision fee as specified in subsection (c1).

(7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.

(8) Notify the probation officer if he fails to obtain or retain satisfactory employment.

(9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).

(10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.

(11) At a time to be designated by his probation officer, visit with his probation officer a facility maintained by the Division of Prisons.

(12) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) there is a program, approved by the Domestic Violence Commission, reasonably available to the defendant, unless the court finds that such would not be in the best interests of justice.

(13) Submit at reasonable times to warrantless searches by a probation officer of the probationer's person and of the probationer's vehicle and premises while the probationer is present, for purposes reasonably related to the probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(14) Submit to warrantless searches by a law enforcement officer of the probationer's person and of the probationer's vehicle, upon a reasonable suspicion that the probationer is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court.

A defendant shall not pay costs associated with a substance abuse monitoring program or any other special condition of probation in lieu of, or prior to, the payments required by this subsection.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), ~~and (11).~~ (11), (13), and (14) of this subsection."

SECTION 8.(b) G.S. 15A-1343(b1) reads as rewritten:

"(b1) Special Conditions. – In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

(1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

(2a) Repealed by Session Laws 2002, ch. 126, s. 17.18, effective August 15, 2002.

(2b) Participate in and successfully complete a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

(3a) Repealed by Session Laws 1997-57, s. 3.

(3b) Submit to intensive supervision ~~by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c),~~ and abide by the rules adopted ~~for that Program.~~ by the Division of Community Corrections for that level of supervision. ~~Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.~~

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically and to pay a fee for the device as specified in subsection (c2) of this section.

(4) Surrender his or her driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the Department of Environment and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for

investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service under the supervision of the Division of Community Corrections and pay ~~any~~ the fee required by ~~law or ordered by the court for participation in the community or reparation service program.~~ G.S. 143B-262.

~~(7) Submit at reasonable times to warrantless searches by a probation officer of his or her person and of his or her vehicle and premises while the probationer is present, for purposes specified by the court and reasonably related to his or her probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.~~

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him or her by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

(9a) Repealed by Session Laws 2004-186, s. 1.1, effective December 1, 2004, and applicable to offenses committed on or after that date.

(10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation."

SECTION 8.(c) G.S. 15A-1343 is amended by adding a new subsection to read:

"(b4) Intermediate Conditions. – The following conditions of probation apply to each defendant subject to intermediate punishment:

(1) If required in the discretion of the defendant's probation officer, perform community service under the supervision of the Division of Community Corrections and pay the fee required by G.S. 143B-262.

(2) Not use, possess, or control alcohol.

(3) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him or her by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(4) Remain within the county of residence unless granted permission to leave by the court or the defendant's probation officer.

(5) Participate in any evaluation, counseling, treatment, or educational program as directed by the probation officer, keeping all appointments and abiding by the rules, regulations, and direction of each program.

These conditions apply to each defendant subject to intermediate punishment unless the court specifically exempts the defendant from one or more of the conditions in its judgment or order. It is not necessary for the presiding judge to state each of these conditions in open court, but the conditions must be set forth in the judgment or order of the court."

SECTION 9. G.S. 15A-1342 is amended by adding a new subsection to read:

"(a1) Supervision of Defendants on Deferred Prosecution. – The Division of Community Corrections of the Department of Correction may be ordered by the court to supervise an offender's compliance with the terms of a deferred prosecution agreement entered into under G.S. 15A-1341(a1). Violations of the terms of the agreement shall be reported to the court as provided in this Article and to the district attorney in the district in which the agreement was entered."

SECTION 10.(a) G.S. 15A-1344(d) reads as rewritten:

"(d) Extension and Modification; Response to Violations. – At any time prior to the expiration or termination of the probation period or in accordance with subsection (f) of this section, the court may after notice and hearing and for good cause shown extend the period of probation up to the maximum allowed under G.S. 15A-1342(a) and may modify the conditions of probation. ~~The probation period shall be tolled if the probationer shall have pending against him criminal charges in any court of competent jurisdiction, which, upon conviction, could result in revocation proceedings against him for violation of the terms of this probation. The~~ A hearing extending or modifying probation may be held in the absence of the defendant, if he fails to appear for the hearing after a reasonable effort to notify him. If a ~~convicted defendant~~ probationer violates a condition of probation at any time prior to the expiration or termination of the period of probation, the court, in accordance with the provisions of G.S. 15A-1345, may continue him on probation, with or without modifying the conditions, may place the defendant on special probation as provided in subsection (e), or, if continuation, modification, or special probation is not appropriate, may revoke the probation and activate the suspended sentence imposed at the time of initial sentencing, if any, or may order that charges as to which prosecution has been deferred be brought to trial; provided that probation may not be revoked solely for conviction of a Class 3 misdemeanor. The court, before activating a sentence to imprisonment established when the defendant was placed on probation, may reduce the sentence, but the reduction shall be consistent with subsection (d1) of this section. A sentence activated upon revocation of probation commences on the day probation is revoked and runs concurrently with any other period of probation, parole, or imprisonment to which the defendant is subject during that period unless the revoking judge specifies that it is to run consecutively with the other period."

SECTION 10.(b) G.S. 15A-1344 is amended by adding a new subsection to read:

"(g) If there are pending criminal charges against the probationer in any court of competent jurisdiction, which, upon conviction, could result in revocation proceedings against the probationer for violation of the terms of this probation, the probation period shall be tolled until all pending criminal charges are resolved. The probationer shall remain subject to the conditions of probation, including supervision fees, during the tolled period. If the probationer is acquitted or if the new charge is dismissed, the time spent on probation during the tolled period shall be credited against the period of probation."

SECTION 11. G.S. 14-72.1(f) is repealed.

SECTION 12.(a) G.S. 15A-1371(h) reads as rewritten:

"(h) Community Service Parole. – Notwithstanding the provisions of any other subsection herein, prisoners serving sentences for impaired driving shall be eligible for community service parole, in the discretion of the Post-Release Supervision and Parole Commission.

Community service parole is early parole for the purpose of participation in ~~a program of~~ community service under the supervision of ~~a probation/parole officer.~~ the Division of Community Corrections. A parolee who is paroled under this subsection must perform as a condition of parole community service in an amount and over a period of time to be determined by the Post-Release Supervision and Parole Commission. However, the total amount of community service shall not exceed an amount equal to 32 hours for each month of active service remaining in his minimum sentence. The Post-Release Supervision and Parole Commission may grant early parole under this section without requiring the performance of community service if it determines that such performance is inappropriate to a particular case.

The probation/parole officer and the ~~community service~~ judicial services coordinator shall develop a program of community service for the parolee. The ~~community service~~ coordinator shall report any willful failure to perform community service work to the probation/parole officer. Parole may be revoked for any parolee who willfully fails to perform community service work as directed by ~~a community service coordinator.~~ the Division of Community Corrections. The provisions of G.S. 15A-1376 shall apply to this violation of a condition of parole.

Community service parole eligibility shall be available to a prisoner:

(1) Who is serving an active sentence the term of which exceeds six months; and

(2) Who, in the opinion of the Post-Release Supervision and Parole Commission, is unlikely to engage in further criminal conduct; and

(3) Who agrees to complete service of his sentence as herein specified; and

(4) Who has served one-half of his minimum sentence.

In computing the service requirements of subdivision (4) of this subsection, credit shall be given for good time and gain time credit earned pursuant to G.S. 148-13. Nothing herein is intended to create or shall be construed to create a right or entitlement to community service parole in any prisoner."

SECTION 12.(b) G.S. 15A-1371(i) reads as rewritten:

"(i) ~~A~~ The fee ~~of two hundred dollars ($200.00)~~ required by G.S. 143B-262.4 shall be paid by all persons who participate in the Community Service Parole Program. ~~That fee must be paid to the clerk of court in the county in which the parolee is released. The fee must be paid in full within two weeks unless the Post Release Supervision and Parole Commission, upon a showing of hardship by the person, allows the person additional time to pay the fee. The parolee may not be required to pay the fee before the person begins the community service unless the Post Release Supervision and Parole Commission specifically orders that the person do so. Fees collected under this subsection shall be deposited in the General Fund. The fee imposed under this subsection may be paid as prescribed by the supervising parole officer.~~"

SECTION 13. G.S. 20-179(n) reads as rewritten:

"(n) Time Limits for Performance of Community Service. – If the judgment requires the defendant to perform a specified number of hours of community ~~service as provided in subsections (i), (j), or (k), the community service shall be completed:~~

~~(1) Within 90 days, if the amount of community service required is 72 hours or more; or~~

~~(2) Within 60 days, if the amount of community service required is 48 hours; or~~

~~(3) Within 30 days, if the amount of community service required is 24 hours.~~

~~The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.~~ service, a minimum of 24 hours must be ordered."

SECTION 14. G.S. 20-179.3 is amended by adding a new subsection to read:

"(j1) Effect of Violation of Community Service Requirement. – Division of Community Corrections staff shall report significant violations of the terms of a probation judgment related to community service to the court that ordered the community service. The court shall then conduct a hearing to determine if there was a willful failure to comply. The hearing may be held in the district where the requirement was imposed, where the alleged violation occurred, or where the probationer resides. If the court determines that there was a willful failure to pay the prescribed fee or to complete the work as ordered within the applicable time limits, the court shall revoke any limited driving privilege issued in the impaired driving case until community service requirements have been met. In addition, the court may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for violation of a condition of probation."

SECTION 15. G.S. 20-179.4 is repealed.

SECTION 16. G.S. 143B-262.4 reads as rewritten:

"**§ 143B-262.4. ~~Deferred prosecution, community service restitution, and volunteer program.~~ Community service program.**

(a) The Department of Correction may conduct a ~~deferred prosecution,~~ community service ~~restitution, and volunteer program for youthful and adult offenders.~~ program. The program shall provide oversight of offenders placed under the supervision of the Division of Community Corrections and ordered to perform community service hours for criminal violations, including driving while impaired violations under G.S. 20-138.1. This program shall assign offenders, either on supervised or on unsupervised probation, to perform service to the local community in an effort to promote the offender's rehabilitation and to provide services that help restore or improve the community. The program shall provide appropriate work site placement for offenders ordered to perform community service hours. The Department may adopt rules to conduct the program. Each offender shall be required to comply with the rules adopted for the program.

(a1) The Secretary of Correction may assign one or more ~~coordinators~~ employees to each district court district as defined in G.S. 7A-133 to assure and report to the Court the offender's compliance with the requirements of the program. ~~The appointment of each coordinator shall be made in consultation with the chief district court judge in the district to which the coordinator is assigned.~~ Each county shall provide office space in the courthouse or other convenient place, for the use of ~~each coordinator~~ the employees assigned to that county.

(b) ~~Unless a fee is assessed pursuant to G.S. 20-179.4 or G.S. 15A-1371(i), a~~ A fee of two hundred dollars ($200.00) shall be paid by all persons who participate in the program or receive services from the program staff. Only one fee may be assessed for each sentencing transaction, even if the person is assigned to the program on more than one occasion, or while on deferred prosecution, or while serving a sentence for the offense. A sentencing transaction shall include all offenses considered and adjudicated during the same term of court. Fees collected pursuant to this subsection shall be deposited in the General Fund. If the person is convicted in a court in this State, the fee shall be paid to the clerk of court in the county in which the person is ~~convicted.~~ convicted, regardless of whether the person is participating in the program as a condition of probation imposed by the court or pursuant to the exercise of authority delegated to the probation officer pursuant to G.S. 15A-1343.2(e) or (f). If the person is participating in the program as a result of a deferred prosecution or similar program, the fee shall be paid to the clerk of court in the county in which the agreement is filed. If the person is participating in the program as a condition of parole, the fee shall be paid to the clerk of the county in which the person is released on parole. Persons participating in the program for any

other reason shall pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee shall be paid in full ~~within two weeks from the date the person is ordered to perform the community service, and~~ before the person may participate in the community service program, except that:

(1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service before the person pays the fee by the court in which the person is convicted; or

(2) A person performing community service pursuant to a deferred prosecution or similar agreement may be given an extension of time or allowed to begin community service before the fee is paid by the official or agency representing the State in the agreement.

(3) A person performing community service as a condition of parole may be given an extension of time to pay the fee by the Post-Release Supervision and Parole Commission. No person shall be required to pay the fee before beginning the community service unless the Commission orders the person to do so in writing.

(4) A person performing community service as ordered by a probation officer pursuant to authority delegated by G.S. 15A-1343.2 may be given an extension of time to pay the fee by the probation officer exercising the delegated authority.

~~(c) The Secretary may designate the same person to serve as a coordinator under this section and under G.S. 20-179.4.~~

(d) A person is not liable for damages for any injury or loss sustained by an individual performing community or reparation service under this section unless the injury is caused by the person's gross negligence or intentional wrongdoing. As used in this subsection, "person" includes any governmental unit or agency, nonprofit corporation, or other nonprofit agency that is supervising the individual, or for whom the individual is performing community service work, as well as any person employed by the agency or corporation while acting in the scope and course of the person's employment. This subsection does not affect the immunity from civil liability in tort available to local governmental units or agencies. Notice of the provisions of this subsection shall be furnished to the individual at the time of assignment of community service work by the ~~community~~ judicial service coordinator.

~~(e) In order to maximize the efficiency and effectiveness of the community service program, (i) beginning September 1, 1995, community service program districts shall have the same boundaries as the district court districts established in G.S. 7A-133 and (ii) beginning with persons hired on or after September 1, 1995, all community service program district supervisors employed by the Department of Correction to supervise each of the community service program districts shall reside in the district in which the supervisor works.~~

(f) The community service staff shall report to the court in which the community service was ordered, a significant violation of the terms of the probation, or deferred prosecution, related to community ~~service.~~ service, including a willful failure to pay any moneys due the State under any court order or payment schedule adopted by the Division of Community Corrections. The community service staff shall give notice of the hearing to determine if there is a willful failure to comply to the person who was ordered to perform the community service. This notice shall be given by either 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 address shown on the records of the community service staff. The notice shall be mailed at least 10 days prior to any hearing and shall state the basis of the alleged willful failure to comply. The court shall then conduct a hearing, even if the person ordered to perform the community service fails to appear, to determine if there is a willful failure to complete the work as ordered by the community service staff within the applicable

time limits. The hearing may be held in the county in which the probation judgment or deferred prosecution requiring the performance of community service was imposed, the county in which the violation occurred, or the county of residence of the person. If the court determines there is a willful failure to comply, it shall revoke any drivers license issued to the person and notify the Division of Motor Vehicles to revoke any drivers license issued to the person until the community service requirement has been met. In addition, if the person is present, the court may take any further action authorized by Article 82 of Chapter 15A of the General Statutes for violation of a condition of probation."

SECTION 17. G.S. 143B-273.10(a) reads as rewritten:

"(a) A county board or a multicounty board shall consist of not less than 10 members and shall, to the greatest extent possible, include the following:

(1) A county commissioner. In the case of a multicounty community corrections advisory board, one county commissioner from each participating county shall serve as a member.
(2) A county manager, or the county manager's designee.
(3) A judge of the superior court.
(4) A judge of the district court.
(5) A district attorney, or the district attorney's designee.
(6) A criminal defense attorney.
(7) A public defender.
(8) A county sheriff, or the sheriff's designee.
(9) A chief of a city police department, or the police chief's designee.
(10) ~~A probation officer.~~ Two representatives from the Division of Community Corrections of the Department of Correction.
~~(11)~~ ~~A community service coordinator.~~
(12) One member selected from each of the following service areas which are available in the county or counties: mental health, public health, substance abuse, employment and training, community-based corrections programs, victim services programs.
(13) A member of the business community.
(14) A member of the community who has been a victim of a crime.
(15) Members at large, including persons who are recovering from chemical dependency or are previous consumers of substance abuse treatment services."

SECTION 18. The provisions of this act are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 19. Section 8 of this act becomes effective December 1, 2009, and applies to offenses committed on or after that date. Section 10(a) applies to hearings held on or after December 1, 2009. The remainder of this act is effective December 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 36

Short Title:	Expand Chem. Analysis Sites/Contr. Substance.	(Public)
Sponsors:	Senators Forrester; Allran and Hartsell.	
Referred to:	Judiciary I.	

February 4, 2009

A BILL TO BE ENTITLED

AN ACT TO DESIGNATE THE IREDELL COUNTY CRIME LABORATORY AS AN ADDITIONAL CONTROLLED SUBSTANCE CHEMICAL ANALYSIS SITE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-95(g) reads as rewritten:

"**§ 90-95. Violations; penalties.**

(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory, the Crime Laboratory of the Iredell County, North Carolina, Sheriff's Office, or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

(1) The State notifies the defendant at least 15 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and

(2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S **D**

SENATE BILL 11
PROPOSED COMMITTEE SUBSTITUTE S11-CSSA-41 [v.1]

5/11/2009 11:23:58 PM

Short Title: DA & Ass't DA/Concealed Gun in Ct. House. (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, and (iii) has successfully completed weapons retention training substantially similar to that provided to certified law enforcement officers in North Carolina,

(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 Ct. House

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 11, 2009
Introduced by:	Sen. Boseman	**Prepared by:**	Bill Patterson Susan Sitze
Analysis of:	PCS to First Edition S11-CSSA-41		Committee Counsel

SUMMARY: ***Senate Bill 11 (PCS) 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.

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

Wendy Graf Ray, counsel to House Judiciary III, substantially contributed to this summary.

S11-SMSA-85(CSSA-41) v1

Attachment XVI

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. S11-CSSA-41 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
(Sen.) Stein

1 moves to amend the bill on page 2, line 1
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "and"
4
5 and on page 2, line 3
6 by inserting at the end of the line the following:
7 "and (iv) secures the weapon in a locked compartment
when
~~while~~ the weapon is not on their person,"
9
10
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE JUDICIARY I COMMITTEE
(Civil)

May 12, 2009
6:00 p.m. – Room 1027

The Senate Judiciary I Committee held its second meeting of the day on Tuesday, May 12, 2009, in Room 1027 of the Legislative Building. Senators present were Committee Chairman Senator Martin Nesbitt; Vice-Chairmen Senators Dan Clodfelter, Pete Brunstetter, R.C. Soles, and Josh Stein; members Senators Phil Berger, Andrew Brock, Harry Brown, Malcolm Graham, Clark Jenkins, Ellie Kinnaird, Floyd McKissick, David Rouzer, Richard Stevens, and Jerry Tillman; Staff Counsel Erika Churchill, Giles Perry, Susan Sitze, and Bill Patterson; Committee Assistants Jan Lee and Jessica Bennett.

Chairman Senator Martin Nesbitt called the meeting to order at 6:00 p.m. and recognized Senator Stein to comment on bills that had been in a subcommittee regarding guardianship. A Proposed Committee Substitute for S.B. 945 – Guardianship Study was distributed and adopted for consideration. Discussion followed. Senator Stein moved to give the Proposed Committee Substitute for S.B. 945 a favorable report and re-refer it to the Rules Committee. It passed unanimously.

Senator Clodfelter was recognized to explain S.B. 661 – Allocate Water Cost/Landlord-Tenant Changes. A Proposed Committee Substitute for S.B. 661 was distributed and Senator Clodfelter moved that it be adopted for consideration. The motion passed and discussion followed. Senator Brunstetter moved to give the Proposed Committee Substitute for S.B. 661 a favorable report and unfavorable as to the original bill and the motion passed.

Senator Garrou was recognized to explain S.B. 695 – Chaining of Dogs. A Proposed Committee Substitute for S.B. 695 was distributed to the committee and Senator Nesbitt moved it be adopted for consideration. Giles Perry, Committee Counsel was recognized to give an analysis of the bill. Senator Nesbitt recognized a Lobbyist with NC Sporting Association, Henri McClees to speak against the bill. She said the bill was not needed. After questions and discussion Senator Garrou withdrew the bill for consideration.

Senator McKissick was recognized to explain S.B. 461 – North Carolina Racial Justice Act. A Proposed Committee Substitute for S.B. 461 was distributed and adopted for consideration. Staff Counsel Susan Sitze was recognized to present a bill analysis. John Snyder, District Attorney from Union County spoke against the bill. Ty Harold from the Center spoke in favor of the bill. Senator Jenkins moved for a favorable report for the Proposed Committee Substitute for S.B. 461, and unfavorable for the original bill. A vote was taken and division called. The PCS for S.B. 461 passed 11 to 6.

Senator Rand was recognized to explain S.B. 794 – Sex Offender/Incapacity to Proceed. Senator Kinnaird said she thought there was consensus with disability rights groups not to do this. Emily Stahl with Disability Rights North Carolina was recognized to speak on

the bill. She said she thought that the bill was unconstitutional and suggested that a study might be a better way to go. After further discussion Senator Clodfelter moved to give the bill a favorable report and it passed.

Senator Stein was recognized to explain S.B. 1015 – Homeowner and Homebuyer Protection Act. Senator moved for adoption of a Proposed Committee Substitute for S.B. 1015 and the motion passed. Erika Churchill, committee counsel, was recognized to assist with the explanation of the bill. Senator Soles moved to amend the bill and the amendment was adopted. After discussion Senator Jenkins moved to roll the amendment into a new PCS, and give the new PCS for S.B. 1015 a favorable report and unfavorable to the original bill and first PCS and it passed.

Senator Don Davis was recognized to explain S.B. 992 – Authorize Mayors to Solemnize Marriage. After explanation Senator Stein moved to give the bill a favorable report and the motion passed.

Senator Don Davis was recognized to speak on S.B. 990 – Increase Penalty/Timber Theft. After discussion by the committee Senator Jenkins moved to give S.B. 990 a favorable report and motion passed.

Senator Clodfelter was asked to Chair the committee meeting while Senator Nesbitt explained S.B. 958 – Disciplinary Proceedings/NC Medical Board. The bill was temporarily displaced.

Senator Rand was recognized to explain S.B. 802 – Immunity for Nonprofit Health Referral Service. A Proposed Committee Substitute for S.B. 802 was presented and adopted for consideration. Senator Albertson made a motion to give the PCS for S.B. 802 a favorable report and unfavorable to the original bill. The motion passed.

Senator McKissick was recognized to explain S.B. 464 – Prevent Racial Profiling. He presented a Proposed Committee Substitute for S.B. 464 and moved for adoption for consideration. Discussion followed. Senator McKissick presented an amendment. Eddie Caldwell was recognized and told the committee that the Sheriffs' Association supported the bill. Senator Jenkins moved to give the PCS for S.B. 464 a favorable report and unfavorable to the original bill. The motion passed.

Senator Rand was recognized to explain S.B. 704 – Pooled Trusts/Medicaid Reimbursements. Erika Churchill, Staff Counsel, made comments on the bill. Senator Rand moved to give the bill a favorable report and the motion passed.

Senator Kinnaird was recognized to explain S.B. 488 – Establish Proportionate Sentence Lengths, S.B. 489 – Even Out Prior Criminal Record Points, and S.B. 490 – Adjust B1-E Felony Penalties. She said these bills were recommended by the Sentencing Commission. Douglas Holbrook from Fiscal Research was recognized for comments. Susan Sitze, Staff, was recognized. Senator Clodfelter was concerned that the bill did not do what it was supposed to do. Senator Nesbitt asked if we had incarceration notes on

these bills and was informed that staff was working on that. Eddie Caldwell, representing the NC Sheriffs' Association said they had no problems with the bills. Senator Berger was concerned the bill might be lessening sentences for violent offenders. The bills were displaced.

Senator Clodfelter was asked to preside as Senator Nesbitt explained S.B. 958 – Disciplinary Proceedings/NC Medical Board. Senator Nesbitt presented a Proposed Committee Substitute for S.B. 958 and moved for adoption to be discussed and the motion passed. Senator Nesbitt moved to amend the bill and the amendment was adopted. The bill as amended was before the committee. Erika Churchill was recognized to explain the bill. Steve Kenan, Chief Counsel for the North Carolina Medical Society spoke on the bill thanking Chairman Nesbitt and saying that he appreciated the work of Senator Nesbitt. Tom Mansfield, legal partner for NC Medical Board spoke on the bill. There were many questions and discussion by the committee. Senator Stevens moved for a favorable report for the PCS for S.B. 958 with the amendment rolled into the bill and unfavorable for the original bill. Motion passed.

Senator Rand was recognized to explain S.B. 1026 – Local Government Tort Claims. Senator Rand presented a Proposed Committee Substitute for S.B. 1026 for adoption for discussion. It was adopted for discussion. Senator Rand reviewed the bill and answered many questions from the committee. After a lengthy discussion by the committee Senator Rand said he would pull the bill to work on it further.

Chairman Nesbitt recognized Senator Clodfelter to explain S.B. 859 – Tort Claims Act/Local Government Opt-in. After discussion by the committee Senator Brunstetter moved to give S.B. 859 a favorable report and it passed unanimously.

The meeting was adjourned.

Copies of PCS for S.B. 945, PCS for S.B. 661, PCS for S.B. 695, Bill Analysis for PCS for S.B. 695, Letter from NRA about SB 695, PCS for S.B. 461, Bill analysis for S.B. 461PCS, S.B. 794, PCS for S.B. 1015, Amendment for 1015, S.B. 992, Bill Analysis for S.B. 992, S.B. 990, Bill Analysis for S.B. 990, PCS for S.B. 802, PCS for S.B. 464, Bill Analysis for S.B. 464, Amendment for S.B. 464, S.B. 704, PCS for S.B. 958, Amendments for S.B. 958 (1) and (2), PCS for S.B. 1026, S.B. 859 are attached to these Minutes as Attachments 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,18,19,20,21,23, respectively.

Respectfully Submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W. Lee

Janette W. Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 945*
PROPOSED COMMITTEE SUBSTITUTE S945-PCS35317-RW-44

Short Title: Guardianship Study. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE THE JOINT LEGISLATIVE STUDY COMMISSION ON STATE GUARDIANSHIP LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. There is created the Joint Legislative Study Commission on State Guardianship Laws. The purpose of the Commission is to review State law pertaining to guardianship and its relationship to other pertinent State laws such as the health care power of attorney, the right to a natural death, and durable power of attorney.

SECTION 2. The Commission shall consist of 19 members as follows:

(1) Four members of the House of Representatives appointed by the Speaker of the House of Representatives.

(2) Four members of the Senate appointed by the President Pro Tempore of the Senate.

(3) The Director of the Administrative Office of the Courts or the Director's designee.

(4) The Director of the Division of Aging and Adult Services in the Department of Health and Human Services or the Director's designee.

(5) A county director of social services appointed by the President Pro Tempore of the Senate.

(6) A clerk of superior court appointed by the Speaker of the House of Representatives.

(7) A physician who specializes in geriatrics appointed by the President Pro Tempore of the Senate.

(8) An attorney who has experience in guardianship matters appointed by the Speaker of the House of Representatives.

(9) A representative of Disability Rights North Carolina.

(10) A director of a local management entity appointed by the President Pro Tempore of the Senate.

(11) A representative of the Mental Health Association in North Carolina appointed by the Speaker of the House of Representatives.

(12) A member of an aging advocacy support group appointed by the President Pro Tempore of the Senate.

(13) A director of public health appointed by the Speaker of the House of Representatives.

In addition, representatives designated by the following organizations shall serve as advisory, nonvoting members of the Commission:

a. The North Carolina Bar Association.
b. The Arc of North Carolina.
c. The North Carolina Guardianship Association.
d. The Alzheimer's Association – Western North Carolina Chapter.
e. The Alzheimer's Association – Eastern North Carolina Chapter.
f. The Protection and Advocacy for Individuals with Mental Illness Advisory Council (PAIMI).
g. Area Agencies on Aging.
h. County Departments on Aging.
i. The North Carolina Hospital Association.
j. A county director of mental health, developmental disabilities, and substance abuse services.

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 Commission shall be filled by the same appointing authority who made the initial appointment.

The Commission, while in the discharge of its official duties, may exercise all powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may 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 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' and the Senate's 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. 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 3. In conducting the study, the Commission shall consider issues related to guardianship for incompetent persons and minors, including, but not limited to, the following:

(1) Whether guardianship should be a remedy of last resort used only if less restrictive alternatives are insufficient.
(2) The definition of incompetency or, if appropriate, incapacity.
(3) Whether courts should be required to make express findings regarding the extent of a person's incapacity and limit the scope of the guardianship accordingly.
(4) Legal rights retained or lost as a result of being adjudicated incompetent.
(5) The role of public human services agencies in providing guardianship services.
(6) Legal procedures and protections in guardianship proceedings.
(7) Public monitoring of guardianship.
(8) Examination of current training resources and the possible collaboration and coordination of current training resources for all stakeholders, including family members, individuals, corporate guardians, and public agencies.
(9) Certification of all guardians and adoption of standards of practice for guardians.
(10) Educating citizens with respect to guardianship and alternatives to guardianship.

(11) Powers, duties, and liabilities of guardians, including guardians of the person.
(12) Creation of an Office of Public Guardian.
(13) Public guardianship, including the provision and funding of public guardianship services, treatment of disinterested public agent guardians, priorities regarding appointment of individuals, corporations, and public guardians, and possible conflicts of interest with the appointment of certain disinterested public agent guardians.
(14) Funding for guardianship services provided by nonprofit agencies, including the need of current corporate guardians for additional resources in providing services to wards.
(15) Implementation of additional corporate guardianship programs.
(16) Enactment of the Uniform Guardianship and Protective Proceedings Act (UGPPA) or similar revisions to Chapter 35A of the General Statutes.
(17) Jurisdictional provisions governing incompetency and guardianship proceedings and portability of guardianship for foreign guardians.
(18) Role of court-appointed lawyers and guardians ad litem in guardianship proceedings to ensure adequate representation of respondents.
(19) Whether guardianship statutes need revision to provide greater protection of the health and welfare of incapacitated adults.
(20) Whether the State should track the number of people under private guardianship and, if so, proposed methods for the tracking.
(21) Prudent investor rules.
(22) Review of the State's adult protective services law.

SECTION 4. The Legislative Study Commission on State Guardianship Laws may make an interim report to the 2010 Regular Session of the 2009 General Assembly. The Commission shall make a final report to the 2011 General Assembly prior to its convening. The Commission shall expire upon delivering its final report, or upon the convening of the 2011 General Assembly, whichever occurs first.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 661
PROPOSED COMMITTEE SUBSTITUTE S661-PCS75260-ST-31

Short Title: Allocate Water Cost/Landlord-Tenant Changes. (Public)

Sponsors:

Referred to:

March 19, 2009

A BILL TO BE ENTITLED

AN ACT AUTHORIZING LESSORS OF CONTIGUOUS PREMISES TO ALLOCATE THE COST FOR WATER AND SEWER SERVICE TO EACH TENANT USING EQUIPMENT THAT MEASURES HOT WATER USAGE, REQUIRING LANDLORDS TO IMPROVE THE HABITABILITY OF DWELLING UNITS BY REPAIRING CERTAIN UNSAFE CONDITIONS, STAYING THE EXECUTION OF A JUDGMENT FOR SUMMARY EJECTMENT WHILE A MOTION FOR MODIFICATION OF THE UNDERTAKING IS PENDING, ESTABLISHING FEES FOR ADMINISTRATIVE SERVICES IN RESIDENTIAL TENANCIES, AND ESTABLISHING THE CIRCUMSTANCES UNDER WHICH A CITY MAY ORDER A DWELLING TO BE VACATED AND CLOSED.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 62-110(g) reads as rewritten:

"(g) In addition to the authority to issue a certificate of public convenience and necessity and establish rates otherwise granted in this Chapter, for the purpose of encouraging water conservation, the Commission may, consistent with the public interest, adopt procedures that allow a lessor to charge for the costs of providing water or sewer service to persons who occupy the same contiguous premises. The following provisions shall apply:

(1) All charges for water or sewer service shall be based on the user's metered consumption of water, which shall be determined by metered measurement of all water ~~consumed and not by any partial measurement of water consumption, unless specifically authorized by the Commission.~~consumed. The rate charged by the lessor shall not exceed the unit consumption rate charged by the supplier of the service.

(1a) If the contiguous premises were built prior to 1989 and the lessor determines that the measurement of the tenant's total water usage is impractical or not economical, the lessor may allocate the cost for water and sewer service to the tenant using equipment that measures the tenant's hot water usage. In that case, each tenant shall be billed a percentage of the landlord's water and sewer costs for water usage in the dwelling units based upon the hot water used in the tenant's dwelling unit. The percentage of total water usage allocated for each dwelling unit shall be equal to that dwelling unit's individually submetered hot water usage divided by all submetered hot water

usage in all dwelling units. The following conditions apply to billing for water and sewer service under this subdivision:

a. A lessor shall not utilize a ratio utility billing system or other allocation billing system that does not rely on individually submetered hot water usage to determine the allocation of water and sewer costs.

b. The lessor shall not include in a tenant's bill the cost of water and sewer service used in common areas or water loss due to leaks in the lessor's water mains. A lessor shall not bill or attempt to collect for excess water usage resulting from a plumbing malfunction or other condition that is not known to the tenant or that has been reported to the lessor.

c. All equipment used to measure water usage shall comply with guidelines promulgated by the American Water Works Association.

d. The lessor shall maintain records for a minimum of 12 months that demonstrate how each tenant's allocated costs were calculated for water and sewer service. Upon advanced written notice to the lessor, a tenant may inspect the records during reasonable business hours.

e. Bills for water and sewer service sent by the lessor to the tenant shall contain all the following information:

1. The amount of water and sewer services allocated to the tenant during the billing period.
2. The method used to determine the amount of water and sewer services allocated to the tenant.
3. Beginning and ending dates for the billing period.
4. The past-due date, which shall not be less than 25 days after the bill is mailed.
5. Any late fee that will be applied if the bill is not paid by the past-due date.
6. A local or toll-free telephone number and address that the tenant can use to obtain more information about the bill.

...."

SECTION 1.(b) This section becomes effective July 1, 2010.

SECTION 2. G.S. 42-34(b) reads as rewritten:

"(b) During an appeal to district court, it shall be sufficient to stay execution of a judgment for ejectment if the defendant appellant pays to the clerk of superior court any rent in arrears as determined by the magistrate and signs an undertaking that he or she will pay into the office of the clerk of superior court the amount of the tenant's share of the contract rent as it becomes due periodically after the judgment was entered and, where applicable, comply with subdivision (c) below. For the sole purpose of determining the amount of rent in arrears pursuant to a judgment for possession pursuant to G.S. 42-30(iii), the magistrate's determination shall be based upon (i) the available evidence presented to the magistrate or (ii) the amounts listed on the face of the filed Complaint in Summary Ejectment. Provided however, when the magistrate makes a finding in the record, based on evidence presented in court, that there is an actual dispute as to the amount of rent in arrears that is due and the magistrate specifies the specific amount of rent in arrears in dispute, in order to stay execution of a judgment for ejectment, the defendant appellant shall not be required to pay to the clerk of superior court the amount of rent in arrears found by the magistrate to be in dispute, even if the magistrate's judgment includes this amount in the amount of rent found to be in arrears. If a defendant appellant appeared at the hearing before the magistrate and the magistrate found an amount of rent in arrears that was not in dispute, and if an attorney representing the defendant

appellant on appeal to the district court signs a pleading stating that there is evidence of an actual dispute as to the amount of rent in arrears, then the defendant appellant shall not be required to pay the rent in arrears alleged to be in dispute to stay execution of a judgment for ejectment pending appeal. Any magistrate, clerk, or district court judge shall order stay of execution upon the defendant appellant's paying the undisputed rent in arrears to the clerk and signing the undertaking. If either party disputes the amount of the payment or the due date in the undertaking, the aggrieved party may move for modification of the terms of the undertaking before the clerk of superior court or the district court. Upon such motion and upon notice to all interested parties, the clerk or court shall hold a hearing within 10 calendar days of the date the motion is filed and determine what modifications, if any, are appropriate. No writ of possession or other execution of the magistrate's judgment shall take place during the time the aggrieved party's motion for modification is pending before the clerk of court."

SECTION 3. G.S. 42-42(a) is amended by adding a new subdivision to read as follows:

"**§ 42-42. Landlord to provide fit premises.**

(a) The landlord shall:

...

(8) Within a reasonable period of time based upon the severity of the condition, repair or remedy any imminently dangerous condition on the premises after acquiring actual knowledge or receiving notice of the condition. For purposes of this subdivision, the term "imminently dangerous condition" means any of the following:

a. Unsafe wiring.
b. Unsafe flooring or steps.
c. Unsafe ceilings or roofs.
d. Unsafe chimneys or flues.
e. Lack of potable water.
f. Lack of operable locks on all doors leading to the outside.
g. Broken windows or lack of operable locks on all windows on the ground level.
h. Lack of operable heating facilities capable of heating living areas to 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from November 1 through March 31.
i. Lack of an operable toilet.
j. Lack of an operable bathtub or shower.
k. Rat infestation as a result of defects in the structure that make the premises not impervious to rodents.
l. Excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation or mold."

SECTION 4. G.S. 42-46 is amended by adding four new subsections to read:

"(e) Complaint-Filing Fee. – Pursuant to a written lease, a landlord may charge a complaint-filing fee in an amount equal to five percent (5%) of the monthly rent only if the tenant was in default of the lease, the landlord filed and served a complaint for summary ejectment and/or money owed, the tenant cured the default or claim, and the landlord dismissed the complaint prior to judgment. The landlord can include this fee in the amount required to cure the default.

(f) Court-Appearance Fee. – Pursuant to a written lease, a landlord may charge a court-appearance fee in an amount equal to ten percent (10%) of the monthly rent only if the tenant was in default of the lease; the landlord filed, served, and prosecuted successfully a complaint

for summary ejectment and/or monies owed in the small claims court; and neither party appealed the judgment of the magistrate.

(g) Attorney's Fee or Second Trial Fee. – Pursuant to a written lease, a landlord may charge a second trial fee if the landlord appears pro se or may charge an attorney's fee if represented by counsel in a new trial following an appeal from the judgment of a magistrate. To qualify for either fee, the landlord must prove that the tenant was in default of the lease and the landlord prevailed on the issue of nonpayment of rent. The pro se landlord's fee may not exceed fifteen percent (15% of the monthly rent in the lease. If the landlord is entitled to an attorney's fee, the court shall determine the outstanding balance according to G.S. 6-21.2.

(h) Limitations on Charging and Collection Fees.

(1) A landlord who claims fees under subsections (a) through (g) of this section is entitled to charge and retain only one of the above fees for the landlord's complaint for summary ejectment and/or money owed.

(2) A landlord who earns a fee under this section may not deduct payment of that fee from a tenant's subsequent rent payment or declare a failure to pay the fee as a default of the lease for a subsequent summary ejectment action.

(3) It is contrary to public policy for a landlord to put in a lease or claim any fee for filing a complaint for summary ejectment and/or money owed other than the ones expressly authorized by this section, and any such unauthorized fees shall be unenforceable on or after October 1, 2009.

(4) A landlord who collects or attempts to collect a fee in contravention of this section shall be deemed in violation of Article 2 of Chapter 75 of the General Statutes.

(5) If the rent is subsidized by the United States Department of Housing and Urban Development, by the United States Department of Agriculture, by a State agency, by a public housing authority, or by a local government, any fee pursuant to subsections (e) through (g) of this section shall be calculated in accordance with subdivisions (1) and (2) of this subsection on the tenant's share of the contract rent only, and the rent subsidy shall not be included."

SECTION 5. G.S. 42-52 reads as rewritten:

"**§ 42-52. Landlord's obligations.**

Upon termination of the tenancy, money held by the landlord as security may be applied as permitted in G.S. 42-51 or, if not so applied, shall be refunded to the tenant. In either case the landlord in writing shall itemize any damage and mail or deliver same to the tenant, together with the balance of the security deposit, no later than 30 days after termination of the tenancy and delivery of possession by the tenant. If the extent of the landlord's claim against the security deposit cannot be determined within 30 days, the landlord shall provide the tenant with an interim accounting after 30 days to preserve the landlord's claim and shall provide a final accounting within 60 days after termination of the tenancy and delivery of possession by the tenant. If the tenant's address is unknown the landlord shall apply the deposit as permitted in G.S. 42-51 after a period of 30 days and the landlord shall hold the balance of the deposit for collection by the tenant for at least six months. The landlord may not withhold as damages part of the security deposit for conditions that are due to normal wear and tear nor may the landlord retain an amount from the security deposit which exceeds his actual damages."

SECTION 6. G.S. 42-55 reads as rewritten:

"**§ 42-55. Remedies.**

If the landlord or the landlord's successor in interest fails to account for and refund the balance of the tenant's security deposit as required by this Article, the tenant may institute a civil action to require the accounting of and the recovery of the balance of the deposit. The willful failure of a landlord to comply with the deposit, bond, or notice requirements of this Article shall void the landlord's right to retain any portion of the tenant's security deposit as

otherwise permitted under G.S. 42-51. In addition to other remedies at law and equity, the tenant may recover damages resulting from noncompliance by the landlord; and upon a finding by the court that the party against whom judgment is rendered was in willful noncompliance with this Article, the court ~~may, in its discretion, allow a reasonable attorney's fee to the duly licensed attorney representing the prevailing party, such attorney's fee to be taxed as part of the cost of court.~~shall award treble damages as provided in G.S. 75-16 or a two thousand dollar ($2,000) civil penalty for each violation of this Article, whichever is greater, and shall award attorneys' fees as provided in G.S. 75-16.1."

SECTION 7. G.S. 160A-443(3) reads as rewritten:

"**§ 160A-443. Ordinance authorized as to repair, closing, and demolition; order of public officer.**

(3) That if, after notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order,

a. If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human ~~habitation or to vacate and close the dwelling as a human habitation; or~~habitation. The order may require that the property be vacated and closed only if the repairs, alterations, or improvements and the current state of the property present a significant threat of bodily harm. In making the determination of significant threat of bodily harm from continued occupancy, the public officer shall consider any additional threats presented by the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities. The order shall state that the failure to make timely repairs as directed in the order shall make the dwelling subject to the issuance of an unfit order under subdivision (4) of this section; or

b. If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), or there exists a significant threat of bodily harm considering the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities, requiring the owner, within the time specified in the order, to vacate and close or remove or demolish such dwelling. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the city and the Historic District Commission determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a)."

SECTION 8. Except as otherwise provided, this act becomes effective October 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 695
PROPOSED COMMITTEE SUBSTITUTE S695-CSLL-37 [v.3]

5/11/2009 6:37:42 PM

Short Title: Chaining of Dogs. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE A CIVIL PENALTY FOR THE CHAINING OF DOGS IN A CRUEL MANNER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-362.3 reads as rewritten:

"**§ 14-362.3. Restraining dogs in a cruel manner.**

(a) A person who maliciously restrains a dog using a chain or wire grossly in excess of the size or weight necessary to restrain the dog safely is guilty of a Class 1 misdemeanor. For purposes of this section, "maliciously" means the person imposed the restraint intentionally and with malice or bad motive.

(b) A person who knowingly restrains a dog using a tethering device in violation of subsections (c) through (e) of this section is subject to a civil penalty of one hundred dollars ($100.00), to be assessed by a court.

(c) No person shall tether, fasten, chain, tie, or restrain a dog, or cause such restraining of a dog, to a tree, fence, post, dog house, or other stationary object for more than three hours in a 24-hour period. During periods of tethering that are not unlawful under this subsection, any tethering device used shall be at least 15 feet in length and attached in such manner as to prevent strangulation or other injury to the dog and entanglement with objects other than the stationary objects to which the device is attached.

(d) No person shall attach a chain or wire or other tethering device to, or cause such attachment to, a choke-type or pronged collar on a dog.

(e) No person shall attach a chain or wire or other tethering device to a dog in such manner that does not allow the dog access to water and adequate shelter.

(f) Notwithstanding the provisions of subsection (c) of this section, a person may, subject to the provisions of subsections (d) and (e) of this section:

(1) Tether and restrain a dog while actively engaged in:

a. Use of the dog in shepherding or herding livestock, or

b. Use of the dog in the business of cultivating agricultural products, if the restraining is reasonably necessary for the safety of the dog, or

c. Use of the dog in lawful hunting activities if the restraint is reasonably necessary for the safety of the dog.

(2) After taking possession of a dog that appears to be a stray dog and after having advised animal control authorities of the capture of the dog, tether

and restrain the dog during such time as the person having taken possession of the dog is seeking the identity of the owner of the dog.

(3) Walk a dog with a handheld leash.

(g) Restraining a dog in a manner prohibited by this section constitutes cruelty as defined in G.S. 19A-1(2).

(h) A county, city, or town may by ordinance reduce the time of permissible tethering provided in subsection (c) of this section, including a prohibition on tethering."

SECTION 2. This act becomes effective December 1, 2009, and applies to acts committed on or after that date.

SENATE BILL 695: Restraining of Dogs

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 11, 2009
Introduced by:	Sen. Garrou	**Prepared by:**	Giles S. Perry Committee Counsel
Analysis of:	PCS to First Edition S695-CSLL-37		

SUMMARY: ***Senate Bill 695 (PCS) makes it a Class 1 misdemeanor to chain a dog using an excessively heavy chain, restricts the duration and manner in which dogs may be tethered, imposes civil penalties for violations of the new tethering requirements, and provides exceptions to the tethering requirements for dogs used in hunting, herding and agricultural cultivation.***

CURRENT LAW: G.S. 14-362.3 makes it a Class 1 misdemeanor maliciously to restrain a dog using a chain or wire whose size is grossly in excess of what is needed safely to restrain the dog. "Maliciously" is defined by the statute to mean that the person imposed the restraint intentionally and with malice or bad motive.

BILL ANALYSIS: Senate Bill 695 (PCS) does the following:

- adds a prohibition, in the existing criminal dog restraint statute, against the malicious use of a chain or wire whose *weight,* as well as whose size, is grossly in excess of that needed safely to restrain the dog.
- provides that a person who knowingly restrains a dog using a tethering device in the following ways is subject to a civil penalty in the amount of $100:

  -tethers, fastens, chain ties, or otherwise restrains a dog to a stationary object for more than 3 hours in a 24 hour period. Any tethering within the permitted time limits must be done with a tether at least 15 feet in length attached so as to prevent strangulation or entanglement with objects other than the stationary object to which it is tethered.

  -attachs a chain or wire or other tethering device to a choke-type or pronged collar.

  -tethers a dog in such a manner as to prevent access to water and adequate shelter.

- provides exceptions to the new tethering restrictions, as long as the tether is not attached to a choke or pronged collar or used in a way that prevents access to water and adequate shelter, while actively engaged in:

  -shepherding or herding livestock.

  -cultivating agricultural products if the restraint is reasonably necessary for the dog's safety.

  -lawful hunting activities, if the restraint is reasonably necessary for the dog's safety.

  -restraining a stray dog, after advising animal control authorities of the dog's capture, while seeking to identify the dog's owner.

  -walking a dog on a handheld leash.

- provides that violation of the new tethering restrictions constitutes cruelty under Article 1 of Chapter 19A, which provides injunctive remedies for the protection and humane treatment of animals.
- permits a county, city or town to reduce the time of permissible tethering or prohibit it altogether.

EFFECTIVE DATE: This bill becomes effective December 1, 2009 and applies to acts committed on or after that date.

PCS Changes: The original bill made a knowing violation of the current criminal dog restraint statute a Class 1 misdemeanor. The PCS restricts the criminal penalty to the malicious restraint of a dog using an excessively large or heavy chain or wire, and imposes civil penalties on knowing violations of the new tethering requirements.

Bill Patterson and Kara McCraw of the Research Division substantially contributed to this summary.

S695-SMRW-123(CSLL-37) v1

 Attachment 5

National Rifle Association of America
Institute for Legislative Action
11250 Waples Mill Road
Fairfax, Virginia 22030

NRA

May 11, 2009

Dear Senator:

I am writing on behalf of NRA members in North Carolina to urge you to oppose Senate Bill 695, Restraining of Dogs. This legislation is, quite simply, an attack on people who own dogs, which includes those who own dogs for hunting purposes. It is part of a greater strategy spearheaded by the Humane Society of the United States (HSUS) to wipe out the use of dogs for hunting by setting unreasonable standards hunters must follow in order to lawfully care for and keep their dogs. S 695 is unnecessary, as there are already ample laws against true animal cruelty. By setting arbitrary time limits for tethering dogs, as well as arbitrary standards for the length of the tether, HSUS and other animal "rights" extremists seek to make it as difficult as possible for people who truly love their dogs to keep them in the safe, responsible manner that best suits their personal circumstances.

The time limit of three hours established in S 695 is not based on anything other than what HSUS feels it may be able to pass in North Carolina. In other states, the "acceptable" time limit for tethering, according to HSUS, can be as long as 10 hours, while in other states, HSUS supports a complete ban on all tethering. HSUS does not establish an "acceptable" standard for tethering because it simply opposes tethering. By establishing a three-hour limit in North Carolina, we can expect HSUS to come back to push for a lower standard, until it can achieve its true goal of outlawing ALL tethering.

As for the length of the tether being set at 15 feet, this, again, is a completely arbitrary number. In one state, HSUS supports a minimum length of six feet, for example. In fact, setting such a standard will undoubtedly create a new danger for countless dogs. Consider a fenced yard where a 10-foot tether would keep a dog completely safe, but a mandated 15-foot tether could lead to a dog having enough room to still leap over the fence, only to become entangled. A tether shorter than the 15-foot mandate could prevent entanglements with other objects in the yard, as well, while a 15-foot tether would allow such potential problems. Ironically, HSUS's own website states one problem with tethering is "dogs' tethers can become entangled with other objects, which can choke or strangle the dogs to death." The unintended consequences of this animal "safety" legislation would likely be more dogs harmed or killed.

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
11250 WAPLES MILL ROAD
FAIRFAX, VIRGINIA 22030

NRA

Another problem with S 695 is the claimed "exemption" for hunting, which is entirely inadequate. It requires that, when a hunter decides to restrain his dog or dogs, that the "restraint is reasonably necessary for the safety of the dog." However, the majority of tetherings during hunting are not done for "safety," but are done to control the animals or for the convenience of the hunter. Hunters, who generally love their dogs as much as anyone, should be trusted to make the decisions they deem necessary for safely and responsibly restraining their animals.

S 695 is bad legislation, and completely unnecessary. It is little more than a "first step" proposal by a rabidly anti-hunting organization that wants to eliminate the use of dogs in hunting by eliminating the manner in which responsible dog owners can keep their animals. Existing animal cruelty laws are perfectly capable of addressing the true cases of animal abuse. NRA urges you to oppose the anti-hunting agenda of HSUS by opposing S 695.

I appreciate your attention to this matter, and if you have any questions regarding this, or any other NRA-related legislation, please do not hesitate letting me know.

Sincerely,

Anthony Roulette
North Carolina State Liaison
NRA-ILA
(703) 267-1205

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 461*
PROPOSED COMMITTEE SUBSTITUTE S461-CSSA-40 [v.1]

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 any prosecutorial district immediately contiguous to the boundaries of that prosecutorial district 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 any prosecutorial district immediately contiguous to the boundaries of that prosecutorial district 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 any prosecutorial district immediately contiguous to the boundaries of that prosecutorial district 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 racial disparities in any prosecutorial district immediately contiguous to the boundaries of the prosecutorial district in which the trial was held is to be held by introducing statistical evidence or other evidence demonstrating that there was no racial discrimination with regard to the decision to seek or impose a sentence of death 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 any prosecutorial district immediately contiguous to the boundaries of that prosecutorial district 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 any prosecutorial district immediately contiguous to the boundaries of that prosecutorial district 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 any prosecutorial district immediately contiguous to the boundaries of that prosecutorial district 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.

SENATE BILL 461:
North Carolina Racial Justice Act

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 11, 2009
Introduced by:	Sen. McKissick	**Prepared by:**	Susan Sitze*
Analysis of:	PCS to First Edition S461-CSSA-40		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 461 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.***

[As introduced, this bill was identical to H472, as introduced by Reps. Womble, Parmon, Luebke, Harrison, which is currently in House 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: 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 mpose the death penalty in the county, the prosecutorial district, or any prosecutorial district mmediately contiguous to the boundaries of that prosecutorial district, at the time the death penalty was

[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).

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 any prosecutorial district immediately contiguous to the boundaries of that prosecutorial 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.

EFFECTIVE DATE: The bill would become effective when it becomes law and its provisions would apply retroactively.

**Jeff Hudson and Brenda J. Carter substantially contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 794

Short Title:	Sex Offender/Incapacity to Proceed.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I.	

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE CIVIL COMMITMENT OF CERTAIN SEX OFFENDERS WHO LACK THE CAPACITY TO PROCEED TO TRIAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1003(a) reads as rewritten:

"(a) ~~When~~ Except as provided in G.S. 15A-1003.1, when a defendant is found to be incapable of proceeding, the presiding judge, upon such additional hearing, if any, as he determines to be necessary, shall determine whether there are reasonable grounds to believe the defendant meets the criteria for involuntary commitment under Part 7 of Article 5 of Chapter 122C of the General Statutes. If the presiding judge finds reasonable grounds to believe that the defendant meets the criteria, he shall make findings of fact and issue a custody order in the same manner, upon the same grounds and with the same effect as an order issued by a clerk or magistrate pursuant to G.S. 122C-261. Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes. If the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon, the judge's custody order shall require a law-enforcement officer to take the defendant directly to a 24-hour facility as described in G.S. 122C-252; and the order must indicate that the defendant was charged with a violent crime and that he was found incapable of proceeding."

SECTION 2. Article 56 of Chapter 15A of the General Statutes is amended by adding the following sections to read:

"**§ 15A-1003.1. Referral of incapable defendant charged with sex offense against a child less than 16 years of age for commitment evaluation, review, and proceedings; disposition of defendant.**

(a) When a defendant charged with a sex offense as defined in G.S. 122F-2 is found to be incapable of proceeding, the presiding judge, upon such additional hearing, if any, as the judge determines to be necessary, shall determine whether there are reasonable grounds to believe the defendant meets the criteria for involuntary commitment under Part 7 of Article 5 of Chapter 122C of the General Statutes or the criteria for commitment under Chapter 122F of the General Statutes. If the presiding judge finds reasonable grounds to believe that the defendant meets the criteria, the judge shall make findings of fact and issue a custody order in the same manner and with the same effect as an order issued by a clerk or magistrate pursuant to G.S. 122C-261. The judge's custody order shall require a law enforcement officer to take the defendant directly to a 24-hour facility as described in G.S. 122C-252; and the order must indicate that the defendant was charged with a sex offense as defined in G.S. 122F-2 and that the defendant was found incapable of proceeding.

(b) Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes except as follows:

(1) If the physician conducting the examination finds that the defendant meets the criteria for involuntary commitment, the defendant shall be involuntarily committed pursuant to the provisions of Part 7 of Article 5 of Chapter 122C of the General Statutes.

(2) If the physician conducting the examination finds that the defendant does not meet the criteria for involuntary commitment, the physician shall find whether the defendant has a mental abnormality as defined in G.S. 122F-2. If the physician determines that the defendant does have a mental abnormality, the physician shall include that determination in the findings and shall provide those findings to both the clerk of court and to the appropriate court as provided by Chapter 122C of the General Statutes. The court shall refer the case of any defendant who does not meet the criteria for involuntary commitment but who does have a mental abnormality as defined in G.S. 122F-2 for review by the Prosecutor's Review Committee and the Attorney General and possible commitment of the defendant under Chapter 122F of the General Statutes. The court shall further order that the defendant be held in the custody of the Department of Health and Human Services for secure confinement and treatment until the review by the Prosecutor's Review Committee and the Attorney General, and any subsequent hearing or trial is completed. If the court receives notice that the Attorney General has declined to file a petition for the commitment of the defendant after conducting a review pursuant to Chapter 122F of the General Statutes, then the court shall order the defendant be released or otherwise committed as appropriate.

(c) The court may make appropriate orders for the temporary detention of the defendant pending that proceeding.

(d) Evidence used at the hearing with regard to capacity to proceed is admissible in the involuntary civil commitment proceedings."

SECTION 3. G.S. 15A-1004 reads as rewritten:

"**§ 15A-1004. Orders for safeguarding of defendant and return for trial.**

(a) When a defendant is found to be incapable of proceeding, the trial court must make appropriate orders to safeguard the defendant and to ensure his return for trial in the event that he subsequently becomes capable of proceeding.

(b) If the defendant is not placed in the custody of a hospital or other institution in a proceeding for involuntary civil ~~commitment,~~ commitment or civil commitment under Chapter 122F of the General Statutes, appropriate orders may include any of the procedures, orders, and conditions provided in Article 26 of this Chapter, Bail, specifically including the power to place the defendant in the custody of a designated person or organization agreeing to supervise him.

(c) If the defendant is placed in the custody of a hospital or other institution in a proceeding for involuntary civil ~~commitment,~~ commitment or commitment under Chapter 122F of the General Statutes, the orders must provide for reporting to the clerk if the defendant is to be released from the custody of the hospital or institution. The original or supplemental orders may make provisions as in subsection (b) in the event that the defendant is released. If the defendant was charged with a sex offense against a child less than 16 years of age as defined in G.S. 122F-2 or a violent crime, including a crime involving assault with a deadly weapon, and that charge has not been dismissed, the order must require that if the defendant is to be released from the custody of the hospital or other institution, he is to be released only to the custody of a specified law enforcement agency. If the original or supplemental orders do not specify to whom the respondent shall be released, the hospital or other institution may release the defendant to whomever it thinks appropriate.

(d) If the defendant is placed in the custody of a hospital or institution pursuant to proceedings for involuntary civil commitment, or if the defendant is placed in the custody of another person pursuant to subsection (b), the orders of the trial court must require that the hospital, institution, or individual report the condition of the defendant to the clerk at the same times that reports on the condition of the defendant-respondent are required under Part 7 of Article 5 of Chapter 122C of the General Statutes, or more frequently if the court requires, and immediately if the defendant gains capacity to proceed. The order must also require the report to state the likelihood of the defendant's gaining capacity to proceed, to the extent that the hospital, institution, or individual is capable of making such a judgment.

(e) The orders must require and provide for the return of the defendant to stand trial in the event that he gains capacity to proceed, unless the charges have been dismissed pursuant to G.S. 15A-1008, and may also provide for the confinement or pretrial release of the defendant in that event.

(f) The orders of the court may be amended or supplemented from time to time as changed conditions require."

SECTION 4. Article 56 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1010. Referral of defendant who is incapable of proceeding to trial and charged with sex offense against a child less than 16 years of age for civil commitment review prior to dismissal of case.**

Notwithstanding G.S. 15A-1008 or G.S. 15A-1009, prior to dismissing the charges against a defendant who is both charged with a sex offense as defined in G.S. 122F-2 and found incapable of proceeding to trial, the court shall determine whether the defendant's case was referred for review under Chapter 122F of the General Statutes, and if not, whether such referral is appropriate. If the court determines that referral is appropriate, then the court shall not dismiss the case at that time but shall refer the case for review to the Prosecutor's Review Committee and the Attorney General pursuant to Chapter 122F of the General Statutes."

SECTION 5. G.S. 122C-261(e) reads as rewritten:

"(e) Upon receipt of the custody order of the clerk or magistrate or a custody order issued by the court pursuant to ~~G.S. 15A-1003,~~ G.S. 15A-1003 or G.S. 15A-1003.1, a law enforcement officer or other person designated in the order shall take the respondent into custody within 24 hours after the order is signed, and proceed according to G.S. 122C-263. The custody order is valid throughout the State."

SECTION 6. G.S. 122C-263(b) reads as rewritten:

"(b) The examination set forth in subsection (a) of this section is not required if:

(1) The affiant who obtained the custody order is a physician or eligible psychologist who recommends inpatient commitment;

(2) The custody order states that the respondent was charged with a sex offense against a child less than 16 years of age as defined in G.S. 122F-2 or a violent crime, including a crime involving assault with a deadly weapon, and he was found incapable of proceeding; or

(3) Repealed by Session Laws 1987, c. 596, s. 3.

In any of these cases, the law-enforcement officer shall take the respondent directly to a 24-hour facility described in G.S. 122C-252."

SECTION 7. G.S. 122C-266(b) reads as rewritten:

"(b) If the custody order states that the respondent was charged with a sex offense against a child less than 16 years of age as defined in G.S. 122F-2 or a violent crime, including a crime involving assault with a deadly weapon, and that he was found incapable of proceeding, the physician shall examine him as set forth in subsection (a) of this section. However, the physician may not release him from the facility until ordered to do so following the district court hearing."

SECTION 8. G.S. 122C-268(c) reads as rewritten:

"(c) If the respondent's custody order indicates that he was charged with a sex offense against a child less than 16 years of age as defined in G.S. 122F-2 or a violent crime, including a crime involving an assault with a deadly weapon, and that he was found incapable of proceeding, the clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d). The district attorney in the county in which the respondent was found incapable of proceeding may represent the State's interest at the hearing."

SECTION 9. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 122F.**

"**Civil Commitment of Certain Sex Offenders.**

"**§ 122F-1. Legislative findings.**

The General Assembly finds that a group of individuals who commit sexual offenses against children but who are found incapable of proceeding to trial exists who require involuntary civil commitment in a secure facility for long-term control, care, and treatment. The General Assembly further finds that without very close supervision there is a high likelihood that these offenders will repeat their sexual offenses against children. Although these offenders may be incapable of proceeding to trial, they may not be diagnosed as mentally ill and therefore cannot be involuntarily committed under involuntary commitment proceedings that pertain to persons who are mentally ill and a danger to self or others. Because the existing civil commitment process is inadequate to address the special needs of these sexual offenders, the risks that they present to society, and the likelihood of repeat offenses against children, the General Assembly has determined that a separate, involuntary civil commitment process for the long-term control, care, and treatment of these sexual offenders is necessary.

"**§ 122F-2. Definitions.**

The following definitions apply in this Chapter:

(1) Court. – The appropriate superior court in the Superior Court Division of the General Court of Justice.

(2) Mental abnormality. – A mental condition affecting a person's emotional or volitional capacity that predisposes the person to commit sex offenses in a degree constituting such person a menace to the health and safety of others. The term includes a personality disorder that makes the person likely to engage in repeat sex offenses if not confined in a secure facility for long-term control, care, and treatment.

(3) Sex offense. – The term includes any of the offenses set out in this subdivision if the offense is committed against a child less than 16 years of age. The term also includes a solicitation or conspiracy to commit any of these offenses against a child less than 16 years of age and aiding and abetting any of these offenses if committed against a child less than 16 years of age.

a. G.S. 14-27.2 (first-degree rape).
b. G.S. 14-27.2A (rape of a child; adult offender).
c. G.S. 14-27.3 (second degree rape).
d. G.S. 14-27.4 (first-degree sexual offense).
e. G.S. 14-27.4A (sexual offense with a child; adult offender).
f. G.S. 14-27.5 (second-degree sexual offense).
g. G.S. 14-27.5A (sexual battery).
h. G.S. 14-27.7 (intercourse and sexual offense with certain victims).
i. G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older).

j. G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude).
k. G.S. 14-178 (incest between near relatives).
l. G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency).
m. G.S. 14-190.9(a1) (felonious indecent exposure).
n. G.S. 14-190.16 (first-degree sexual exploitation of a minor).
o. G.S. 14-190.17 (second-degree sexual exploitation of a minor).
p. G.S. 14-190.17A (third-degree sexual exploitation of a minor).
q. G.S. 14-190.18 (promoting prostitution of a minor).
r G.S. 14-190.19 (participating in the prostitution of a minor).
s. G.S. 14-202.1 (taking indecent liberties with children).
t. G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act).

(4) Sexual predator. – A person who: (i) is charged with committing a sex offense; (ii) is found incapable of proceeding to trial; and (iii) suffers from a mental abnormality.

"**§ 122F-3. Scope of Chapter; referral of defendant for review and possible civil commitment as sexual predator.**

Civil commitment pursuant to this Chapter is available only for a defendant who is charged with a sex offense, found incapable of proceeding to trial, and determined to have a mental abnormality. A defendant who is charged with a sex offense and determined to be incapable of proceeding to trial may be referred for review and determination of whether the defendant is a sexual predator under this Chapter by either a court pursuant to G.S. 15A-1003.1 or by a facility, institution, or agency that has custody of the defendant pursuant to G.S. 122F-4.

"**§ 122F-4. Release of certain defendants from confinement in secure facility.**

(a) No Release of Certain Defendants From Secure Facility Without Notice. – No facility, institution, or agency that has legal custody of a defendant who: (i) is charged with a sex offense but found incapable of proceeding to trial and (ii) is lawfully confined in a secure facility shall release the defendant without providing notice of the pending release to the Attorney General, the Prosecutor's Review Committee, and the victim or the victim's parent or legal guardian as appropriate at least 90 days before the release.

(b) Information to Be Provided to the Victim or the Victim's Parent or Legal Guardian as Appropriate, Attorney General, and Prosecutor Review Committee. – The facility, institution, or agency with legal custody of the defendant shall provide to the victim or the victim's parent or legal guardian as appropriate, the Attorney General, and the Prosecutor's Review Committee all of the following:

(1) The defendant's name, identifying factors, anticipated future residence, and offense history.
(2) The documentation of institutional adjustment and any treatment received by the sexual predator.

(c) Immunity. – The facility, institution, or agency with custody of the defendant, its employees, officials, individuals contracting, appointed, or volunteering to perform services under this Chapter, and the Prosecutor's Review Committee established in G.S. 122F-5 are immune from civil or criminal liability for any good-faith conduct under this Chapter.

"**§ 122F-5. Prosecutor's Review Committee; scope of review; membership requirements.**

(a) Committee Appointed; Membership. – The Attorney General shall appoint a Prosecutor's Review Committee. The Committee shall include a member of the staff of the Attorney General, a district attorney, and a victim's representative. The Attorney General or the Attorney General's designee shall be the chair of the Committee.

(b) Duties and Scope of Review. – The Prosecutor's Review Committee shall review the report and records of each person referred to the Committee by the court and of each person for whom the Committee receives notice of a pending release under G.S. 122F-4 to determine whether or not probable cause exists to believe the person is a sexual predator. The Prosecutor's Review Committee shall make the probable cause determination within 30 days of receiving the report and records from the court or facility, institution, or agency as appropriate. In addition to the records and reports considered by the court referring the defendant's case pursuant to G.S. 15A-1003.1, or the facility, institution, or agency notifying the Committee of a pending release of a defendant, the Committee shall also consider information provided by the district attorney who prosecuted the defendant.

"**§ 122F-6. Petition for probable cause determination.**

When the Prosecutor's Review Committee has determined that probable cause exists to support the allegation that the defendant is a sexual predator, the Attorney General shall file a petition with the court in the jurisdiction where the person committed the offense and shall notify the victim or the victim's parent or legal guardian as appropriate and the district attorney in the jurisdiction where the defendant was charged with the offense that the Committee found that probable cause exists. The Attorney General shall also notify the victim or the victim's parent or legal guardian as appropriate of the time, date, and location of the probable cause hearing before the court. The petition, which must be filed within 30 days of the probable cause determination by the Prosecutor's Review Committee, shall request that the court make a probable cause determination as to whether the person is a sexual predator. The petition shall allege that the defendant is a sexual predator and shall state sufficient facts that would support a probable cause allegation.

"**§ 122F-7. Determination of probable cause; taking person into custody; hearing; evaluation.**

(a) Determination of Probable Cause. – Upon filing of a petition under G.S. 122F-6, the court shall determine whether probable cause exists to believe that the person named in the petition is a sexual predator. If the court determines that probable cause exists to believe that the person is a sexual predator, the person shall be taken into custody if he or she is not already confined in a secure facility.

(b) Notice and Hearing to Contest Probable Cause. – Immediately upon being taken into custody pursuant to subsection (a) of this section, the person shall be provided with notice of the opportunity to appear in person at a hearing to contest probable cause as to whether the detained person is a sexual predator. This hearing shall be held within 72 hours after a person is taken into custody pursuant to subsection (a) of this section. At this hearing the court shall do all of the following:

(1) Verify the detainee's identity.

(2) Receive evidence and hear arguments from the person and the district attorney or Attorney General as appropriate.

(3) Determine whether probable cause exists to believe that the person is a sexual predator.

The State may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

(c) Defendant's Rights at Hearing to Contest Probable Cause. – At the hearing to contest probable cause as provided in subsection (b) of this section, the detained person has all of the following rights in addition to any rights previously specified:

(1) To be represented by counsel.

(2) To present evidence on the person's behalf.

(3) To cross-examine witnesses who testify against the person.

(4) To view and copy all petitions and reports in the court file.

(d) Evaluation of Defendant if Probable Cause Found. – If the probable cause determination is made, the court shall direct that the person be transferred to an appropriate secure facility including, but not limited to, a local or regional detention facility for an evaluation as to whether the person is a sexual predator. The evaluation shall be conducted by a qualified expert approved by the court at the probable cause hearing.

"**§ 122F-8. Trial; trier of fact; continuation of trial; assistance of counsel; access of examiners to person; payment of expenses.**

(a) Authority of Attorney General and District Attorney to Represent the State in Trial for Civil Commitment. – Both the Attorney General and the district attorney in the jurisdiction where the defendant committed the sex offense may represent the State in the trial for civil commitment pursuant to this section and G.S. 122F-9; however, if the venue for the civil commitment trial is the jurisdiction where the defendant was charged with the sex offense, then the Attorney General shall refer the case to the appropriate district attorney in that jurisdiction unless ordered otherwise by the court.

(b) Trial Schedule; Request for Jury Trial; Continuation of Trial; Notice to Victim or the Victim's Parent or Legal Guardian as Appropriate. – Within 60 days after the completion of a hearing held pursuant to G.S. 122F-6 in which probable cause was found, the court shall conduct a trial to determine: (i) whether the person committed the act with which the defendant is charged and, if so, (ii) whether the person is a sexual predator. Within 30 days after the determination of probable cause by the court pursuant to G.S. 122F-7, the person, or the district attorney or Attorney General as appropriate, may request, in writing, that the trial be before a jury. If such a request is made, the court shall schedule a trial before a jury at the next available date in the superior court in the county where the offense was committed. If no request is made, the trial shall be before a judge in the county where the offense was committed. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and only if the respondent will not be substantially prejudiced. The Attorney General or the district attorney as appropriate shall notify the victim or the victim's parent or legal guardian as appropriate, in a timely manner, of the time, date, and location of the trial.

(c) Assistance of Counsel; Access of Examiners to Person; Payment of Expenses. – At all stages of the proceedings under this Chapter, a person subject to this Chapter is entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist the person. If a person is subjected to an examination under this Chapter, the person may retain a qualified expert of his or her own choosing to perform the examination. All examiners are permitted to have reasonable access to the person for the purpose of the examination, as well as access to all relevant medical, psychological, criminal offense, and disciplinary records and reports. In the case of an indigent person who would like an expert of his or her own choosing, the court shall determine whether the services are necessary. If the court determines that the services are necessary and the expert's requested compensation for the services is reasonable, the court shall assist the person in obtaining the expert to perform an examination or participate in the trial on the person's behalf. The court shall approve payment for the services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person, and compensation received in the case or for the same services from any other source.

"**§ 122F-9. Standard for determining predator status; control, care, and treatment of defendant; interagency agreements; release; mistrial procedures.**

(a) Trial: Determine Whether Defendant Committed Unlawful Act. – When conducting a trial under this Chapter, the court first shall hear evidence and determine whether the defendant committed the act with which he or she is charged. The hearing on this issue shall comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases apply, and all constitutional rights available to defendants at

criminal trials, other than the right not to be tried while lacking the capacity to proceed to trial, apply. After hearing evidence on this issue, the court shall make specific findings on whether the defendant committed the act with which he or she is charged; the extent to which the defendant's incompetence or developmental disability affected the outcome of the hearing, including its effect on the defendant's ability to consult with and assist counsel and to testify on the defendant's own behalf; the extent to which the evidence could be reconstructed without the assistance of the defendant; and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds beyond a reasonable doubt that the defendant committed the act with which he or she is charged, the court shall enter a final order and may proceed to consider whether the defendant should be committed pursuant to this Chapter.

(b) Trial: Determine Sexual Predator Status. – The court or jury shall determine whether, beyond a reasonable doubt, the defendant is a sexual predator. If a jury determines that the defendant is a sexual predator, the determination shall be by unanimous verdict. If the court or jury determines that the defendant is a sexual predator, the defendant shall be committed to the custody of the Department of Health and Human Services for control, care, and treatment until such time as the defendant's mental abnormality has so changed that the defendant is safe to be at large and has been released pursuant to this Chapter.

(c) Control, Care, and Treatment of Defendant. – The control, care, and treatment shall be provided at a facility operated by the Department of Health and Human Services. At all times, a defendant committed for control, care, and treatment by the Department of Health and Human Services pursuant to this Chapter shall be kept in a secure facility, and the defendant shall be segregated at all times from other patients under the supervision of the Department of Health and Human Services. The Department of Health and Human Services may enter into an interagency agreement with the Department of Correction for the control, care, and treatment of these defendants. A defendant who is in the confinement of the Department of Correction pursuant to an interagency agreement authorized by this Chapter shall be kept in a secure facility and shall, if practical and to the degree possible, be housed and managed separately from offenders in the custody of the Department of Correction.

(d) Release if Jury Not Convinced Beyond a Reasonable Doubt. – If the court or jury is not satisfied beyond a reasonable doubt that the defendant committed the act with which the defendant was charged, the defendant shall be released. If the court or jury is not satisfied beyond a reasonable doubt that the defendant is a sexual predator, the court shall direct the defendant's release.

(e) Mistrial. – Upon a mistrial, the court shall direct that the defendant be held at an appropriate secure facility including, but not limited to, a local or regional detention facility until another trial is conducted. A subsequent trial following a mistrial must be held within 90 days of the previous trial, unless the subsequent trial is continued.

(f) Right of Appeal. – The court or jury's determination that a defendant committed the act with which the defendant is charged may be appealed. The court or jury's determination that a defendant is a sexual predator may be appealed. The defendant shall be committed to the custody of the Department of Health and Human Services pending his or her appeal.

"**§ 122F-10. Periodic mental examination of committed defendants; report; petition for release; hearing; trial to consider release.**

(a) Periodic Mental Examination. – A defendant committed pursuant to this Chapter shall have an examination of his or her mental condition performed once every year. The defendant may retain or, if the defendant is indigent and so requests, the court may appoint a qualified expert to examine the defendant, and the expert shall have access to all medical, psychological, criminal offense, and disciplinary records and reports concerning the defendant. The annual report shall be provided to the court which committed the defendant pursuant to this Chapter, the Attorney General, and the district attorney in the jurisdiction where the defendant was charged with the sex offense.

(b) Judicial Hearing; Defendant's Right to Petition for Release. – The court shall conduct an annual hearing to review the status of the committed defendant. The committed defendant is not prohibited from petitioning the court for release at this hearing. The Secretary of Health and Human Services shall provide the committed defendant with an annual written notice of the defendant's right to petition the court for release over the Secretary's objection; the notice shall contain a waiver of rights. The Secretary shall forward the notice and waiver form to the court with the annual report. The committed defendant has a right to have an attorney represent him or her at the hearing, but the committed defendant is not entitled to be present at the hearing.

(c) Change in Mental Abnormality. – If the court determines that probable cause exists to believe that the defendant's mental abnormality has so changed that the defendant is safe to be at large and, if released, is not likely to commit a sex offense, the court shall schedule a trial on the issue. At the trial, the committed defendant is entitled to be present and is entitled to the benefit of all constitutional protections that were afforded the defendant at the initial commitment proceeding. The Attorney General shall notify the victim or the victim's parent or legal guardian as appropriate of all proceedings. The Attorney General shall represent the State and has the right to have the committed defendant evaluated by qualified experts chosen by the State. The trial shall be before a jury if requested by the defendant, or the Attorney General. The committed defendant also has the right to have qualified experts evaluate the defendant on the defendant's behalf, and the court shall appoint an expert if the defendant is indigent and requests the appointment. The burden of proof at the trial is upon the State to prove beyond a reasonable doubt that the committed defendant's mental abnormality remains such that the defendant is not safe to be at large and, if released, is likely to engage in sex offenses.

"**§ 122F-11. Petition of release; hearing ordered by court.**

If the Secretary of Health and Human Services determines that the defendant's mental abnormality has so changed that the defendant is safe to be at large and, if released, is not likely to commit a sex offense, the Secretary shall authorize the defendant to petition the court for release. The petition shall be served upon the court and the Attorney General. The Attorney General shall notify the victim or the victim's parent or legal guardian as appropriate of the proceeding. The court, upon receipt of the petition for release, shall order a hearing within 30 days. The Attorney General shall represent the State and has the right to have the petitioner examined by experts chosen by the State. The hearing shall be before a jury if requested by either the petitioner or the Attorney General. The burden of proof is upon the Attorney General to show beyond a reasonable doubt that the petitioner's mental abnormality remains such that the petitioner is not safe to be at large and, that if released, is likely to commit a sex offense.

"**§ 122F-12. Grounds for denial of petition for release.**

Nothing in this Chapter prohibits a defendant from filing a petition for release pursuant to this Chapter. However, if a defendant has previously filed a petition for release without the approval of the Secretary of Health and Human Services, and the court determined either upon review of the petition or following a hearing that the petitioner's petition was frivolous or that the petitioner's condition had not changed so that the petitioner continued to be a threat and, if released, would commit a sex offense, the court shall deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed defendant without the Secretary's approval, the court shall, whenever possible, review the petition and determine if the petition is based upon frivolous grounds and, if so, shall deny the petition without a hearing.

"**§ 122F-13. Restricted release of confidential information and records to agencies and Attorney General.**

In order to protect the public, relevant information and records that otherwise are confidential or privileged shall be released to the facility, institution, or agency with legal

custody of a defendant and the Attorney General for the purpose of meeting the notice requirements of G.S. 122F-4 and determining whether a defendant is or continues to be a sexual predator.

"**§ 122F-14. Evidentiary records; court order to open sealed records.**

Psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical records, and victim impact statements that have been submitted to the court or admitted into evidence under this Chapter shall be part of the record, but must be sealed and opened only on order of the court.

"**§ 122F-15. Registration of defendants released from commitment.**

A defendant released from commitment pursuant to this Chapter shall register pursuant to and comply with the requirements of Article 27A of Chapter 14 of the General Statutes.

"**§ 122F-16. Involuntary detention or commitment; constitutional requirements.**

The involuntary detention or commitment of a defendant pursuant to this Chapter shall conform to constitutional requirements for care and treatment.

"**§ 122F-17. Return of defendant for trial upon regaining capacity.**

If a defendant who is committed under this Chapter gains capacity to proceed to trial, the individual or institution that has custody of the defendant shall notify the clerk in the county in which the criminal proceeding is pending and the defendant shall be returned for trial pursuant to G.S. 15A-1006."

SECTION 10. Part 1 of Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.6D. Registration requirement for certain persons charged with sex offenses but found incapable of proceeding to trial.**

Pursuant to G.S. 122F-15, a person who is charged with a sex offense as defined in G.S. 122F-2, is found incapable of proceeding to trial, is committed under Chapter 122F of the General Statutes, and is later released from commitment shall register in person just as a defendant convicted of the same offense with which the person is charged must register."

SECTION 11. This act becomes effective September 1, 2009, and applies to any defendant charged with a sex offense as defined by G.S. 122F-2, as enacted by Section 9 of this act, and found incapable of proceeding to trial under Article 56 of Chapter 15A of the General Statutes before, on, or after September 1, 2009, if the defendant has a mental abnormality, unless the charge was dismissed under G.S. 15A-1008 before September 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1015
PROPOSED COMMITTEE SUBSTITUTE S1015-CSST-37 [v.1]

5/12/2009 1:10:20 AM

Short Title: Homeowner and Homebuyer Protection Act. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ENACT THE HOMEOWNER AND HOMEBUYER PROTECTION ACT TO PROHIBIT HOME FORECLOSURE RESCUE SCAMS AND OFFER PROTECTIONS IN LAND INSTALLMENT SALES.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as the "Homeowner and Homebuyer Protection Act."

SECTION 2. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 6.

"Home Foreclosure Rescue Scams.

"**§ 75-120. Definitions.**

The following definitions shall apply in this Article:

(1) Exempt transaction. – A foreclosure rescue transaction in which the transferee is any of the following:
  a. A member of the transferor's family.
  b. A bona fide nonprofit organization that regularly provides financial, housing, or social services to individuals.
  c. A state, federal, or local government agency or organization.

(2) Default. – Whenever a mortgagor misses two or more consecutive scheduled payments on a mortgage.

(3) Foreclosure rescue transaction. – A transfer of residential real property, including a manufactured home, which includes all of the following features:
  a. The real property is the principal residence of the transferor.
  b. The transferor is in default or has received written notification from the lender of the intent to foreclose on a mortgage loan obligation that is secured by the transferor's principal residence.
  c. The transferee, an agent of the transferee, or others acting in concert with the transferee make representations that the transfer of the residential property will enable the transferor to prevent, postpone, or reverse the effect of foreclosure and to remain in the residence.
  d. By written or oral agreement, the transferor retains an interest in the property conveyed, including a tenancy interest, an interest under a lease-purchase agreement, an option to reacquire the property, or any

other legal, equitable, or possessory interest in the property conveyed.

e. The transferee fails to pay consideration to the transferor in an amount of at least 50 percent of the fair market value of the property.

"**§ 75-121. Foreclosure rescue transactions prohibited; exceptions; violation.**

It is unlawful for a person other than the transferor to engage in, promise to engage in, arrange, offer, promote, solicit, participate in, assist with, or carry out a foreclosure rescue transaction for financial gain or with the expectation of financial gain. This section does not apply to exempt transactions. A violation of this section is an unfair trade practice under G.S. 75-1.1."

SECTION 3. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 47G.**

"**Land Installment Contracts.**

"**§ 47G-1. Definitions.**

The following definitions apply in this Chapter, unless the context requires otherwise:

(1) Covered Lease Agreement—A residential lease agreement that is combined with, or is executed concurrently with an option contract.

(2) Covered Option Contracts – An option contract for the purchase of real property that includes or is combined with, or is executed concurrently with a residential lease agreement.

(3) Forfeiture. – The termination of an option purchaser's rights to exercise an option to purchase property that is the subject of the option contract, and those rights of persons claiming by or through an option purchaser, to the extent permitted by this Chapter, because of a breach of one or more of the purchaser's obligations under the option contract and/or residential lease agreement.

(4) Option Fee. – A payment made by the option purchaser to the option seller that constitutes the price the option purchaser pays for the right to buy the property at a specified price in the future.

(5) Option Purchaser, or Purchaser. – An individual who purchases an interest in property under an option contract, or any legal successor in interest to that individual.

(6) Option Seller, or Seller. – A person who makes a sale of an option by means of an option contract, or the person's successor in interest.

(7) Property. – Either (i) real estate located in this State, upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families that is or will be occupied by the purchaser as the purchaser's principal dwelling, or (ii) a manufactured home, as that term is defined in G.S. 143-149.9, which is purchased with real estate on which it is located or is to be located and that is or will be occupied by a purchaser as the purchaser's principal dwelling, if the purchase price is $5,000 or more. Property does not include a manufactured home which is purchased without real estate.

"**§ 47G-2. Minimum contents of land installment sales contracts.**

(a) Writing Required. – Every option contract shall be evidenced by a contract signed by all parties to it and containing all the terms to which they have agreed.

(b) At the time the purchaser signs the option contract, the seller shall deliver to him an exact copy of the contract. If the seller fails to provide a copy of the option contract, the contract signed by the purchaser is voidable at the option of the purchaser, and the seller, on demand, shall immediately refund to the purchaser any and all payments that have been made. However, the contract shall not be voidable simply as a result of clerical errors, momentary

delays in the provision of an exact copy of the contract to the purchaser, or other immaterial errors.

(c) Recordation. Within 20 days after the contract has been signed by both the seller and the purchaser, the seller shall cause a copy of the contract or a memorandum of the contract to be recorded at the purchaser's expense in the register of deeds in the county where the property sold under the contract is located. If a memorandum of the contract is recorded, it shall be entitled "Memorandum of Option Contract" and shall contain, as a minimum, the names of the parties, the signatures of the parties, a description of the property and applicable time periods. A person other than a seller and purchaser may rely on the recorded materials in determining whether the requirements of this subsection have been met.

"**§ 47G-3. Escrow of down payment.**

The provisions of Chapter 42 of the General Statutes apply to the portion of the contract that is a residential lease agreement. After a tenant exercises an option to purchase leased property under a residential lease, Chapter 42 of the General Statutes shall no longer apply to the lease.

"**§ 47G-4. Protection of tenants' rights.**

(a) A purchaser's right to exercise an option to purchase property under an option contract cannot be forfeited unless a breach has occurred in one or more of the purchaser's obligations under the option contract and the option contract provides that as a result of such breach the seller is entitled to forfeit the contract.

(b) In addition to any other remedies at law, a seller's violation of this section entitles the purchaser to either a claim for damages or the right to rescind the contract and seek the return of all payments that have been made under the option contract.

"**§ 47G-5. Conditions of forfeiture; right to cure.**

(a) An option seller may not execute an Option Contract with an option purchaser if, at the time the option contract is entered into and recorded, the property is encumbered by a lien, mortgage or encumbrance unless the vendor notifies the purchaser in a separate written disclosure:

(1) That the property is subject to one or more outstanding mortgages, liens, or other encumbrances.

(2) In 14-point type, of the fact that if the option seller fails to make timely payments, the lien holder may attempt to collect the debt by foreclosing on the lien and selling the property at a foreclosure sale.

(b) If, at any time prior to the expiration of the time period in which the option purchaser has a right to exercise the option to purchase, the obligor defaults on a loan secured by a lien or mortgage on the property, the option purchaser may elect to exercise the option or cancel and rescind the contract.

(c) A violation of this section is a violation of G.S. 75-1.1 and in addition to other rights or remedies provided by law, entitles the option purchaser to cancel and rescind the option contract and/or lease agreement and receive from the option seller:

(1) The return of all payments of any kind made to the option seller under the contract.

(2) Reimbursement for the value of any improvements made to the property by the option purchaser."

SECTION 4. The General Statutes are amended by adding a new Chapter to read:

"Chapter 47H.

"Contracts for Deed.

"**§ 47H-1. Definitions.**

The following definitions apply in this Chapter, unless the context requires otherwise:

(1) Contract for Deed. – An agreement in which the seller agrees to sell an interest in property to the purchaser and the purchaser agrees to pay the

purchase price in five or more payments exclusive of the down payment, if any, and the seller retains title to the property as security for the purchaser's obligation under the agreement. Contracts for deeds do not include purchase and sale agreements entered into with the good faith expectation of a separate transaction in which a third party or the seller agrees to finance the purchase price.

(2) Cure the default. – To perform the obligations under the contract that are described in the notice of intent to forfeit required by G.S. 47H-6 and that are necessary to reinstate the contract. This term is synonymous with the term 'cure.'

(3) Down payment. – A payment made by the purchaser to the seller that constitutes part of the purchase price of property that is the subject of a Contract for Deed and that is made at or before the time of the execution of that contract.

(4) Forfeiture. – The termination of all of a purchaser's rights, title, and interest, and those of persons claiming by or through a purchaser, in property that is the subject of a contract for deed, to the extent permitted by this Chapter, because of a breach of one or more of the purchaser's obligations under the contract.

(5) Property. – Either (i) real estate located in this State, upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families that is or will be occupied by the purchaser as the purchaser's principal dwelling, or (ii) a manufactured home, as that term is defined in G.S. 143-149.9, which is purchased with real property on which it is located or on which it is to be located and that is or will be occupied by a purchaser as the purchaser's principal dwelling, if the purchase price is $5,000 or more. Property does not include a manufactured home purchased without real estate.

(6) Purchaser. – An individual who purchases an interest in property under a Contract for deed, or any legal successor in interest to that individual.

(7) Seller. – A person who makes a sale of property by means of a contract for deed, or the person's successor in interest.

"**§ 47H-2. Minimum contents for contracts for deed; recordation.**

(a) Writing Required. – Every Contract for Deed shall be evidenced by a contract signed by all parties to it and containing all the terms to which they have agreed.

(b) Contents. – A Contract for Deed contract shall contain at least all of the following:

(1) The full names and addresses of all the parties to the contract.

(2) The date the contract is signed by each party.

(3) A legal description of the property conveyed.

(4) The sales price of the property conveyed.

(5) Any charges or fees for services included in the contract separate from the sale price.

(6) The amount of the purchaser's down payment.

(7) The principal balance owed by the purchaser, which is the sum of the amounts stated in subdivisions (4) and (5) of this subsection, less the amount stated in subdivision (6) of this subsection.

(8) The amount and due date of each installment payment and the total number of installment payments.

(9) The interest rate on the unpaid balance, if any, and the method of determining the interest rate.

(10) A conspicuous statement of any pending order of any public agency or other matters of public record affecting the property.

(11) A statement of the rights of the purchaser to cure a default.

(12) A statement setting forth the obligation of each party who is responsible for making repairs to the property, the payment of taxes, hazard insurance assessments, homeowner association dues and other charges against the property from the date of the contract.

(13) A provision that the purchaser has the right to accelerate or prepay any installment payments without penalty.

(14) A description of conditions of the property that includes whether any structure on the property has water, sewer, septic, and electricity service, whether the property is in a floodplain, whether anyone else has a legal interest in the property, and whether restrictive covenants prevent building or installing a dwelling.

(15) A statement indicating the amount of any real estate taxes and/or homeowner association dues, or special assessments owed on the property that is the subject of the contract, and the amount of such taxes dues, or assessments that are delinquent.

(16) A statement of the purchaser's right to cancel pursuant to G.S. 47G-7.

(c) At the time the purchaser signs the contract, the seller shall deliver to him an exact copy of the contract. If the seller fails to provide a copy of the contract, or the contract does not contain the minimum provisions, the contract signed by the purchaser is voidable at the option of the purchaser, and the seller, on demand, shall immediately refund to the purchaser all payments and deposits that have been made. However, the contract shall not be voidable simply as a result of clerical errors, momentary delays in the provision of an exact copy of the contract to the purchaser, or other immaterial errors.

(d) Recordation. Within 20 days after the contract has been signed by both the seller and the purchaser, the seller shall cause a copy of the contract or a memorandum of the contract to be recorded at the purchaser's expense in the register of deeds in the county where the property sold under the contract is located. If a memorandum of the contract is recorded, it shall be entitled "Memorandum of a Contract for Deed" and shall contain, as a minimum, the names of the parties, the signatures of the parties, a description of the property and applicable time periods.

"**§ 47H-3. Escrow of down payment.**

(a) Any down payment that a purchaser provides pursuant to a contract for deed shall be immediately deposited in a trust or escrow account in an insured bank, savings and loan association, or credit union in this State within 3 business days of executing the contract and shall remain in the account until either the seller transfers ownership of the property, until the agreement is cancelled, or until 4 days after the purchaser takes possession of the property. Funds held in the trust or escrow account shall be deemed to belong to the purchaser and not to the seller.

(b) If a seller fails to comply with subsection (a) of this section, and the contract is cancelled or rescinded and the down payment not returned to the seller per G.S. 47H-7(b), the seller shall be liable to the purchaser in an amount equal to three times the amount of the down payment.

"**§ 47H-4. Conditions of forfeiture; right to cure.**

(a) A purchaser's rights under a contract for deed shall not be forfeited except as provided in this Chapter. A contract for deed cannot be forfeited unless a breach has occurred in one or more of the purchaser's obligations under the contract and the contract provides that as a result of such breach the seller is entitled to forfeit the contract. Furthermore, the purchaser's rights shall not be forfeited until the purchaser has been notified of the intent to

forfeit in accordance with G.S. 47H-5 and been given a right to cure the default and has failed to do so within the time period allowed. A timely tender of cure shall reinstate the contract.

(b) In addition to any other remedies at law, a seller's violation of this section entitles the purchaser to either a claim for damages or the right to rescind the contract and seek the return of all payments, deposits, and down payments that have been made under the contract. If the purchaser elects to rescind the contract, the seller is entitled to an offset of an amount equal to the fair market value of the use of the property during the duration of the purchaser's possession of the property plus an amount necessary to compensate the seller for any damages caused to the property by the purchaser beyond normal wear and tear.

"**§ 47H-5. Notice of default and intent to forfeit.**

(a) The notice of default and intent to forfeit shall contain all of the following:

(1) The name, address, and telephone number of the seller and the seller's agent or attorney giving the notice, if any.

(2) A description of the contract, including the names of the original parties to the contract.

(3) A legal description of the property.

(4) A description of each default under the contract on which the notice is based.

(5) A statement that the contract will be forfeited if all defaults are not cured by a date stated in the notice which is not less than 45 days after the notice of default and intent to forfeit is sent or any longer period specified in the contract or other agreement with the seller.

(6) An itemized statement of, or to the extent not known at the time the notice of default and intent to forfeit is given or recorded, a reasonable estimate of, all payments of money in default and, for defaults not involving the failure to pay money, a statement of the action required to cure the default.

(7) Any additional information required by the contract or other agreement with the seller.

(b) Any notice of default and intent to forfeit must be served on the purchaser in accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. Any notice of default and intent to forfeit must also be served on the occupant of the dwelling that is the subject of the contract for deed, if different from the purchaser.

(c) In addition to any other remedies at law, a seller's violation of this section entitles the purchaser to either a claim for damages or the right to rescind the contract and seek the return of all payments, deposits, and down payments that have been made under the contract. If the purchaser elects to rescind the contract, the seller is entitled to an offset of an amount equal to the fair market value of the use of the property during the duration of the purchaser's possession of the property plus an amount necessary to compensate the seller for any damages caused to the property by the purchaser beyond normal wear and tear.

"**§ 47H-6. Periodic statements of account.**

The seller shall provide the purchaser with a statement of account at least once every 12-month period for the term of a Contract for Deed. The statement must include at least the following information:

(1) The amount paid under the contract.

(2) The remaining amount owed under the contract.

(3) The number of payments remaining under the contract.

(4) The amounts paid to taxing authorities on the purchaser's behalf, if collected by the seller.

(5) The amounts paid to insure the property on the purchaser's behalf, if collected by the seller.

(6) If the property has been damaged and the seller has received insurance proceeds, an accounting of the proceeds applied to the property.

(7) If the property is encumbered by a lien or mortgage pursuant to G.S. 47G-8(b), the outstanding balance of the loan that is secured by the property.

"**§ 47H-7. Purchaser's right to cancel contract.**

(a) In addition to any other rights or remedies provided by law, the purchaser may cancel and rescind an Contract for Deed for any reason by sending by certified or registered mail, return receipt requested, or by delivering in person a signed, written notice of cancellation to the seller not later than the third day after taking possession of the property or the fourteenth day after the date of the signing of the contract, whichever is earlier.

(b) If the purchaser cancels the contract pursuant to subsection (a) of this section, the seller shall, not later than the tenth day after the date the seller receives the purchaser's notice of cancellation, or the tenth day after the property is vacated, whichever occurs the latest, inspect the subject property. Within five days of inspection, the vendor shall return to the purchaser any and all property exchanged or payments made by the purchaser under the contract minus an offset of an amount equal to the fair market value of the use of the property during the duration of the purchaser's possession of the property plus an amount necessary to compensate the seller for any damages caused to the property by the purchaser beyond normal wear and tear.

"**§ 47H-8. Requirement that seller hold unencumbered legal title.**

(a) A seller may not execute a contract for deed with a purchaser if the seller does not own the property in fee simple, free from any liens, mortgages, or other encumbrances, except as provided in subsection (b) of this section.

(b) Subsection (a) of this section does not apply to a lien, mortgage or encumbrance place on the property that is any of the following:

(1) Placed on the property because of the conduct of the purchaser.

(2) Agreed to by the purchaser as a condition of a loan obtained to place improvements on the property, including utility and fire protection improvements.

(3) Placed on the property by the seller prior to the execution of the contract for deed if the seller notifies the purchaser in a separate written disclosure of all of the following:

a. The amount of the outstanding balance of the loan.

b. The amount of the monthly payments due on the loan and the due date of those payments.

c. In 14-point type, a statement that if the seller fails to make timely payments to the lien holder, the lien holder may attempt to collect the debt by foreclosing on the lien and selling the property at a foreclosure sale.

"**§ 47H-9. Late fees.**

No seller may charge a late payment charge under a contract for deed in excess of five percent (5%) of the amount of the payment past due. A late payment charge that violates this section is hereby declared usurious.

SECTION 5. This act becomes effective October 1, 2009, and applies to transactions on or after that date.

Attachment 10

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 5/12

S. B. No. 1015 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) Soles

moves to amend the bill on page 2, line 7

( ) WHICH CHANGES THE TITLE

by deleting the phrase "participate in,".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 992

Short Title:	Authorize Mayors to Solemnize Marriage.	(Public)
Sponsors:	Senators Davis; Apodaca, Kinnaird, Snow, Stein, and Stevens.	
Referred to:	Judiciary I.	

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE MAYORS TO SOLEMNIZE MARRIAGES IF AUTHORIZED BY LOCAL ORDINANCE.

The General Assembly of North Carolina enacts:

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

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

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

(1) a. In the presence of an ordained minister of any religious denomination, a minister authorized by a church, ~~or a magistrate;~~a magistrate, or a mayor authorized by local ordinance to solemnize marriages; and

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

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

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

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

SENATE BILL 992:
Authorize Mayors to Solemnize Marriage

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 10, 2009
Introduced by:	Sen. Davis	**Prepared by:**	Giles S. Perry
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 992 authorizes mayors to solemnize marriages, if authorized by local ordiance.***

CURRENT LAW: Under current law, a marriage may be solemnized by:

- a minister of any religious denomination, a minister authorized by a church, or a magistrate, with the subsequent declaration by the minister or magistrate that the persons are husband and wife.
- any mode of solemnization recognized by any religious denomination, or a federally or State recognized Indian Nation or Tribe.

BILL ANALYSIS: Senate Bill 992 would amend G.S. 51-1 to authorize a mayor to solemnize a marriage, if authorized by local ordinance.

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

S992-SMRW-113(e1) v2

Attachment 13

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 990

Short Title:	Increase Penalty/Timber Theft.	(Public)
Sponsors:	Senators Davis; Apodaca, Bingham, Jenkins, Kinnaird, McKissick, Nesbitt, and Snow.	
Referred to:	Judiciary I.	

March 26, 2009

BILL TO BE ENTITLED

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR CUTTING, INJURING, OR REMOVING ANOTHER'S TIMBER RESULTING IN DAMAGES THAT EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-135 reads as rewritten:

"**§ 14-135. Cutting, injuring, or removing another's timber.**

If any person not being the bona fide owner thereof, shall knowingly and willfully cut down, injure or remove any standing, growing or fallen tree or log, the property of another, he shall be guilty of a ~~Class 1 misdemeanor.~~ criminal offense as follows:

(1) If the damage caused by a violation of this section is two thousand five hundred dollars ($2,500) or less, then the offense is a Class 1 misdemeanor.

(2) If the damage caused by a violation of this section is more than two thousand five hundred dollars ($2,500), then the offense is a Class I felony."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

SENATE BILL 990:
Increase Penalty/Timber Theft

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 10, 2009
Introduced by:	Sen. Davis	**Prepared by:**	Bill Patterson
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 990 increases the criminal penalty for cutting, injuring or removing another's timber from a Class 1 misdemeanor to a Class I felony if the resulting damage exceeds $2,500.***

CURRENT LAW: G.S. 14-235 makes it a Class 1 misdemeanor to knowingly and willfully cut down, injure or remove another person's standing, growing or fallen tree or log.

BILL ANALYSIS: Senate Bill 990 revises G.S. 14-235 to make the violation of this section a Class I felony if it results in damage of more than $2,500. Under the bill, a violation resulting in damage of $2,500 or less remains a Class 1 misdemeanor.

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

S990-SMTG-50(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 802
PROPOSED COMMITTEE SUBSTITUTE S802-CSRW-45 [v.1]

5/11/2009 8:56:09 PM

Short Title: Immunity for Nonprofit Health Ref. Service. (Public)

Sponsors:

Referred to:

March 25, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A NONPROFIT COMMUNITY HEALTH REFERRAL SERVICE THAT REFERS LOW-INCOME PATIENTS TO PHYSICIANS FOR FREE SERVICES IS NOT LIABLE FOR THE ACTS OR OMISSION OF THE PHYSICIAN IN RENDERING SERVICE TO THAT PATIENT, IF THE PHYSICIAN MAINTAINS PROFESSIONAL LIABILITY COVERAGE FOR THAT SERVICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-21.16 reads as rewritten:

"**§ 90-21.16. Volunteer health care professionals; liability limitation.**

(a) This section applies as follows:

(1) Any volunteer medical or health care provider at a facility of a local health department or at a nonprofit community health center,

(2) Any volunteer medical or health care provider rendering services to a patient referred by a local health department as defined in G.S. 130A-2(5) or nonprofit community health at the provider's place of employment,

(3) Any volunteer medical or health care provider serving as medical director of an emergency medical services (EMS) agency,

(4) Any retired physician holding a "Limited Volunteer License" under G.S. 90-12(d), or

(5) Any volunteer medical or health care provider licensed or certified in this State who provides services within the scope of the provider's license or certification at a free clinic facility,

who receives no compensation for medical services or other related services rendered at the facility, center, agency, or clinic, or who neither charges nor receives a fee for medical services rendered to the patient referred by a local health department or nonprofit community health center at the provider's place of employment shall not be liable for damages for injuries or death alleged to have occurred by reason of an act or omission in the rendering of the services unless it is established that the injuries or death were caused by gross negligence, wanton conduct, or intentional wrongdoing on the part of the person rendering the services. The free clinic, local health department facility, nonprofit community health center, or agency shall use due care in the selection of volunteer medical or health care providers, and this subsection shall not excuse the free clinic, health department facility, community health center, or agency for the failure of the volunteer medical or health care provider to use ordinary care in the provision of medical services to its patients.

(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 or her business or profession. Services provided by a medical or health care provider who receives no compensation for his or her services and who voluntarily renders such services at facilities of free clinics, local health departments as defined in G.S. 130A-2, nonprofit community health centers, or as a volunteer medical director of an emergency medical services (EMS) agency, are deemed not to be in the normal and ordinary course of the volunteer medical or health care provider's business or profession.

(c) As used in this section, a "free clinic" is a nonprofit, 501(c)(3) tax-exempt organization organized for the purpose of providing health care services without charge or for a minimum fee to cover administrative costs and that maintains liability insurance covering the acts and omissions of the free clinic and any liability pursuant to subsection (a) of this section.

(d) A nonprofit community health referral service that refers low-income patients to physicians for free services is not liable for the acts or omission of the physician in rendering service to that patient if the physician maintains professional liability coverage for that service.

(e) As used in this section, a "nonprofit community health referral service" is a nonprofit, 501(c)(3) tax-exempt organization organized to provide for no charge the referral of low-income, uninsured patients to volunteer health care providers who provide health care services without charge to patients."

SECTION 2. This act becomes effective October 1, 2009, and applies to any alleged acts or omissions in the providing of medical services occurring on or after that date.

SENATE BILL 802:
Immunity for Nonprofit Health Ref. Service

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 11, 2009
Introduced by:	Sen. Rand	**Prepared by:**	Giles S. Perry
Analysis of:	PCS to First Edition S802-CSRW-45		Committee Counsel

SUMMARY: Senate Bill 802 (PCS) provides that a nonprofit community health referral service that refers low-income patients to physicians for free services is not liable for the acts or omission of the physician in rendering service to that patient if the physician maintains professional liability coverage for that service.

CURRENT LAW: Current G.S. 90-21.16 provides immunity to volunteer medical or health care providers: at a facility of a local health department or at a nonprofit community health center; rendering services to a patient referred by a local health department as defined in G.S. 130A-2(5) or nonprofit community health at the provider's place of employment; and serving as medical director of an emergency medical services (EMS) agency, licensed or certified in this State who provides services within the scope of the provider's license or certification at a free clinic facility. G.S. 90-21.16 also provides immunity to any retired physician holding a "Limited Volunteer License" under G.S. 90-12(d). The immunity provides by this statute applies to damages for injuries or death alleged to have occurred by reason of an act or omission in the rendering of the services, unless it is established that the injuries or death were caused by gross negligence, wanton conduct, or intentional wrongdoing on the part of the person rendering the services.

BILL ANALYSIS: Senate Bill 802 (PCS) provides that a nonprofit community health referral service that refers low-income patients to physicians for free services is not liable for the acts or omission of the physician in rendering service to that patient if the physician maintains professional liability coverage for that service.

A "nonprofit community health referral service" is defined in the bill to be "a nonprofit, 501(c)(3) tax exempt organization organized to provide for no charge the referral of low income, uninsured patients to volunteer health care providers who provide health care services without charge to patients."

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to any alleged acts or omissions in the providing of medical services occurring on or after that date

S802-SMRW-124(CSRW-45) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 464
PROPOSED COMMITTEE SUBSTITUTE S464-CSSA-30 [v.2]

5/6/2009 9:55:45 PM

Short Title: Prevent Racial Profiling. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REQUIRING THE COLLECTION OF TRAFFIC LAW ENFORCEMENT STATISTICS IN ORDER TO PREVENT RACIAL PROFILING AND TO PROVIDE FOR THE CARE OF MINOR CHILDREN WHEN PRESENT AT THE ARREST OF CERTAIN ADULTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-10.01 reads as rewritten:

"**§ 114-10.01. Collection of traffic law enforcement statistics.**

(a) In addition to the duties set forth in G.S. 114-10, the Division of Criminal Statistics shall collect, correlate, and maintain the following information regarding traffic law enforcement by law enforcement officers:

(1) The number of drivers stopped for routine traffic enforcement by law enforcement officers, the officer making each stop, the date each stop was made, the agency of the officer making each stop, and whether or not a citation or warning was issued.

(2) Identifying characteristics of the drivers stopped, including the race or ethnicity, approximate age, and gender.

(3) The alleged traffic violation that led to the stop.

(4) Whether a search was instituted as a result of the stop.

(5) Whether the vehicle, personal effects, driver, or passenger or passengers were searched, and the race or ethnicity, approximate age, and gender of each person searched.

(6) Whether the search was conducted pursuant to consent, probable cause, or reasonable suspicion to suspect a crime, including the basis for the request for consent, or the circumstances establishing probable cause or reasonable suspicion.

(7) Whether any contraband was found and the type and amount of any such contraband.

(8) Whether any written citation or any oral or written warning was issued as a result of the stop.

(9) Whether an arrest was made as a result of either the stop or the search.

(9a) If an arrest was made, whether there were minor children in the vehicle at the time of that arrest and in whose custody the child or children were placed.

reasonable period of time, the law enforcement officer shall contact the county department of social services.

SECTION 2. This act becomes effective January 1, 2010.

SENATE BILL 464:
Prevent Racial Profiling

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 6, 2009
Introduced by:	Sen. McKissick	**Prepared by:**	Susan Sitze
Analysis of:	PCS to First Edition S464-CSSA-30		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 464 amends the law requiring the collection of traffic law enforcement statistics in order to prevent racial profiling and provides for the care of minor children when present at the arrest of certain adults.***

BILL ANALYSIS:

Section 1 amends G.S. 114-10.01; regarding collection of traffic law enforcement statistics, as follows:

- If an arrest was made, requires information to be collected on whether there were minor children in the vehicle at the time of the arrest and in whose custody they were placed.
- Requires employing law enforcement agencies to assign each officer an anonymous identifying number and to make those numbers public record.
- Requires agency subject to the reporting requirements to submit the collected information to the Division of Criminal Statistics within 30 days of the close of each month. Any agency that does not submit the information on time shall be ineligible to apply for any law enforcement grants available by or through the State until the information which is reasonably available is submitted.

Section 2 amends G.S. 15A-401 to require a law enforcement officer who arrests an adult who is supervising minor children at the time of the arrest to place the minor children with a responsible adult approved by a parent or guardian of the minor children. If it is not possible to place the minor children with a responsible adult approved by a parent or guardian within a reasonable time, the law enforcement officer shall contact the county department of social services.

EFFECTIVE DATE: This act becomes effective January 1, 2010.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **Attachment 18**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. S464-CSSA-44 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) McKissick

1 moves to amend the bill on page 2, line 45
2 ( ) WHICH CHANGES THE TITLE
3 by ~~inserting between~~
4 inserting "who are present" between "children" and
5 "at"
6
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 704

Short Title:	Pooled Trusts/Medicaid Reimbursement.	(Public)
Sponsors:	Senator Rand.	
Referred to:	Judiciary I.	

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE GENERAL STATUTES WITH RESPECT TO POOLED TRUSTS AND ESTATE RECOVERY UNDER MEDICAID.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 36D of the General Statutes reads as rewritten:

"**Chapter 36D.**

"**North Carolina Community Trust for ~~Persons with Severe Chronic Disabilities.~~ Disabled Persons.**

"**§ 36D-1. Title; findings.**

(a) This ~~Article~~ Chapter shall be known and may be cited as the "North Carolina Community Trust for ~~Persons With Severe Chronic Disabilities Act~~ Disabled Persons Act."

(b) The General Assembly finds that it is in the public interest to encourage activities by voluntary associations and private citizens that will supplement and augment those services provided by local, State, and federal government agencies in discharge of their responsibilities toward ~~individuals with severe chronic disabilities.~~ disabled individuals. The General Assembly further finds that, as a result of changing social, economic, and demographic trends, families of ~~persons with severe chronic disabilities~~ disabled persons are increasingly aware of the need for a vehicle by which they can assure ongoing individualized personal concern for a ~~severely~~ disabled family member who may survive that disabled person's parents or other family members, and provide for the efficient management of ~~small legacies or~~ trust funds to be used for the benefit of that disabled person. In a number of other states, voluntary associations have established foundations or trusts intended to be responsive to these concerns. Therefore, the General Assembly finds that North Carolina will benefit by the enactment of enabling legislation expressly authorizing the formation of ~~community~~ pooled trusts in accordance with 42 U.S.C.S. § 1396p(d)(4)(C) and criteria set forth by statute and administered by the Secretary of State, under Chapter 55A of the General Statutes. ~~These community trusts permit the pooling of resources contributed by families or persons with philanthropic intent, along with the reservation of portions of these funds for the use and benefit of designated beneficiaries.~~

(c) This Article shall be liberally construed and applied to promote its underlying purposes and policies, which are, among others, to:

(1) Encourage the orderly establishment of community trusts for the benefit of ~~persons with severe chronic disabilities;~~ disabled persons;

(2) Ensure that community trusts are administered properly and that the managing boards of the trusts are free from conflicts of interest;

(3) Facilitate sound administration of trust funds for ~~persons with severe chronic disabilities by allowing family members and others to pool resources in order to make professional management investment more efficient;~~ disabled

persons by allowing the community trust to pool trust funds in order to make professional management investment more efficient;

(4) Provide parents of ~~persons with severe chronic disabilities~~ disabled persons peace of mind in knowing that a means exists to ensure that the interests of their ~~children who have severe chronic disabilities~~ disabled children are properly looked after and managed after the parents die or become incapacitated;

(5) Help make guardians available for ~~persons with severe chronic disabilities~~ disabled persons who are incompetent, when no other family member is available for this purpose;

(6) Encourage the availability of private resources to purchase for ~~persons with severe chronic disabilities~~ disabled persons goods and services that are not available through any governmental or charitable program and to conserve these resources by limiting purchases to those that are not available from other sources;

(7) Encourage the inclusion, as beneficiaries of ~~community~~ pooled trusts, of persons who lack resources and whose families are indigent, in a way that does not diminish the resources available to other beneficiaries whose families have contributed to the pooled trust; and

(8) Remove the disincentives that discourage parents and others from setting aside funds for the future protection of ~~persons with severe chronic disabilities~~ disabled persons by ensuring that the interest of beneficiaries in ~~community~~ pooled trusts that meet the rules set forth by the Department of Health and Human Services, Division of Medical Assistance, are not considered assets or income that would disqualify them from any governmental or charitable entitlement program with an economic means test.

"§ 36D-2. Definitions.

As used in this Article, unless the context clearly requires otherwise:

(1) "Beneficiary" means any person ~~with a severe chronic disability~~ who is disabled as defined in 42 U.S.C.S. § 1382c(a)(3) ~~who has qualified as a member of the community trust program~~ on whose behalf an individual trust sub-account was established within the pooled trust by the parent, grandparent, or legal guardian of such individual, by such individual, or by a court before that individual reached the age of 65 and who has the right to receive those services and benefits ~~vested with the management of the business and affairs of a corporation, formed for the purpose of managing a community trust, irrespective of the name by which the group is designated.~~ provided by the community trust.

(2) "Community trust" means a nonprofit ~~organization~~ corporation that offers the following services:

a. Administration of ~~special trust funds for persons with severe chronic disabilities;~~ pooled trust funds for disabled persons;

b. Follow along services;

c. Guardianship for ~~persons with severe chronic disabilities~~ disabled persons who are incompetent, when no other family member or immediate friend is available for this purpose; and

d. Advice and counsel to persons who have been appointed as individual guardians of the persons or estates of ~~persons with severe chronic disabilities~~ disabled persons.

(2a) "Department" means the North Carolina Department of Health and Human Services.

(2b) "Disabled person" or "disabled individual" means any person who is disabled as defined in 42 U.S.C.S. § 1382c(a)(3).

(3) "Follow along services" means (i) those services offered by community trusts that are designed to ensure that the needs of each beneficiary are being met for as long as may be required and may include periodic visits to the beneficiary and to the places where the beneficiary receives services, (ii) participation in the development of individualized plans being made by service providers for the beneficiary, and (iii) other similar services consistent with the purposes of this Article.

(3a) "Pooled trust" or "umbrella pooled trust" means a trust that contains the assets of individuals who are disabled, which is established in accordance with the rules set forth for pooled trusts by the Department and contains a separate sub-account for each beneficiary of the trust, but the funds in the accounts are pooled for purposes of investment and management of funds. Sub-accounts in the pooled trust are established solely for the benefit of the disabled individuals on whose behalf the sub-account is established. There shall be one trust investment governing the umbrella pooled trust that shall be approved by the Department.

~~(4) "Severe chronic disability" means a physical or mental impairment that is expected to give rise to a long-term need for specialized health, social, and other services, and that makes the person with the disability dependent upon others for assistance to secure these services.~~

(5) "Surplus trust funds" means funds accumulated in the ~~trust~~ individual trust sub-account from contributions made by or on behalf of an individual beneficiary that, after the death of the beneficiary, are determined by the board to be in excess of the actual cost of providing services during the beneficiary's lifetime, including the beneficiary's share of administrative costs.

(6) "Trustee" means any member of the board of a corporation, ~~formed for the purpose of managing a community trust,~~ whether that member is designated as a trustee, director, manager, governor, or by any other title.

"§ 36D-3. Scope.

This ~~Article~~ Chapter applies to every community trust established in this State. In addition to meeting the other requirements of this Article, every board that administers a community trust shall incorporate as a nonprofit corporation under Chapter 55A of the General Statutes. Except as otherwise provided in this Chapter, Chapter 55A of the General Statutes applies to community trusts.

"§ 36D-4. Administration; powers and duties.

(a) Every community trust shall be administered by a board. The board shall be comprised of no less than nine and no more than 21 members, at least one-third of whom are parents or relatives of ~~persons with severe chronic disabilities.~~ disabled persons. No board member shall be a provider of habilitative, health, social, or educational services to ~~persons with severe chronic disabilities~~ disabled persons or an employee of such a service provider. The board may, however, allow service providers to serve on the board in an advisory capacity. Board members shall be selected, to the maximum extent possible, from geographic areas throughout the area served by the trust.

The certificate of incorporation filed with the Secretary of State under Chapter 55A of the General Statutes shall, in addition to the requirements set forth in that Chapter, demonstrate that the requirements of this section have been met.

(b) Notwithstanding any other law, no trustee may be compensated for services provided as a member of the board of a community trust. No fees or commissions shall be paid to these trustees; however, a trustee may be paid for necessary expenses incurred by the trustee and may receive indemnification as permitted under Chapter 55A of the General Statutes.

(c) For every community trust incorporated under this Article, the corporation itself is considered the trustee of any funds administered by it. No individual board member is considered to be trustee of any fund deposited on behalf of any ~~individual beneficiary with severe chronic disabilities.~~ individual beneficiary.

(d) The board shall adopt bylaws that include a declaration delineating the primary geographic area serviced by the trust and the principal services to be provided. The board shall file the bylaws with the Secretary of State.

(e) The board may retain paid staff as it considers necessary to provide follow along services to the extent required by each beneficiary. The community trust may authorize the expenditure of funds from a beneficiary's sub-account for any goods or services, including recreational services, but not including luxury items, which the ~~board, in its sole discretion, determines will promote the well-being of any beneficiary.~~ community trust determines is for the sole benefit of the beneficiary. The community trust may ~~pay~~ authorize the expenditure of funds from a beneficiary's sub-account for the ~~burial~~ reasonable burial expenses of any beneficiary. The community ~~trust, however, may not~~ trust may not, however, expend funds for any goods or services of comparable quality to those available to any particular beneficiary through any governmental or charitable program, insurance, or other sources. The community trust may expend funds to meet the reasonable costs of administering the community trust.

(f) The community trust is not required to provide services to a beneficiary who is a competent adult and who has refused to accept the services. Further, the community trust shall not provide services of a nature or in a manner that would be contrary to the public policy of this State at the time the services are to be provided. In either case, the community trust may offer alternate services that are consistent with the purposes of this Article and in keeping with the best interests of the beneficiary.

(g) The community trust may accept appointment as guardian of the person, guardian of the estate, or guardian of both on behalf of any beneficiary. If the community trust accepts appointment as guardian of the person of an individual, it shall assign a staff member to carry out its responsibilities as the guardian. The community trust may, upon request, offer consultative and professional assistance to an individual, private or public guardian of any of its beneficiaries.

(h) The community trust may accept contributions, bequests, and designations under life insurance policies to the community trust on behalf of ~~individuals with severe chronic disabilities~~ disabled individuals for the purpose of qualifying them as beneficiaries.

(i) At the time a contribution, bequest, or assignment of insurance proceeds is made, the trustor shall receive a written statement of the services to be provided to the beneficiary. The statement shall include a starting date for the delivery of services or the condition precedent, such as the death of the trustor, which shall determine the starting date. The statement shall describe the frequency with which services shall be provided and their duration, and the criteria or procedures for modifying the program of services from time to time in the best interests of the beneficiary.

(j) No trustee, board member, or paid staff member of a community trust shall undertake legal representation or other professional services on behalf of the trust or its beneficiaries.

"§ 36D-5. Accountability.

Along with the annual report filed with the Secretary of State under Chapter 55A of the General Statutes, the community trust shall file an itemized statement that shows the funds collected for the year, income earned, salaries, other expenses incurred, and the opening and

final ~~trust balances.~~ pooled trust and individual trust sub-account balances. A copy of this statement shall be made available, upon request, to any beneficiary, trustor, ~~or~~ designee of the ~~trustor.~~ trustor, or the Department. In addition, once annually, each trustor or the trustor's designee shall receive a detailed individual statement of the services provided to the trustor's beneficiary during the previous 12 months and the services to be provided during the following 12 months. The community trust shall make a copy of the individual statement available to any ~~beneficiary,~~beneficiary or the Department, upon request.

"**§ 36D-6. Gifts, surplus trust funds.**

The community trust may accept gifts and use surplus trust funds for the purpose of qualifying as beneficiary any indigent person whose family members lack the resources to make a full contribution on that person's behalf. A maximum of fifty percent (50%) of surplus trust funds may be retained in the pooled trust account for this sole purpose. Upon termination of an individual trust account, at least fifty percent (50%) of the surplus trust funds remaining in the individual account shall be used to satisfy any claims or liens of the Department, up to an amount equal to the total medical assistance paid on behalf of or to the disabled individual by the Department. The amount retained by the trust shall be based on a sliding scale calculation, based upon the number of years the disabled individual received services from the community trust, but in no instance shall the pooled trust retain more than fifty percent (50%) of the surplus trust funds. The community trust shall not distribute surplus trust funds to any remaindermen identified in the trust document, nor shall it ~~The extent and character of the services and selection of beneficiaries are at the discretion of the community trust. The community trust may not~~ use surplus trust funds to make any charitable contribution on behalf of any beneficiary or any group or class of beneficiaries. The community trust may accept gifts to meet start-up ~~costs,~~ costs and reduce the charges to the trust for the cost of administration. ~~administration, and for any other purpose that is consistent with this Article.~~ Gifts made to the trust for an unspecified purpose shall be used by the community trust either to qualify indigent persons whose families lack the means to qualify them as beneficiaries of the trust or to meet any start-up costs that the trust incurs.

"**§ 36D-7. Special requests on behalf of beneficiary.**

The community trust may agree to fulfill any special requests made on behalf of a beneficiary as long as the requests are consistent with this ~~Article~~ Chapter and with federal law concerning pooled trusts for the disabled, 42 U.S.C.S. § 1396p(d)(4)(C) and provided that an adequate contribution has been made for this purpose on behalf of a beneficiary. The community trust may agree to serve as trustee for any individual private trust created on behalf of a disabled beneficiary, regardless of whether the trust is revocable or irrevocable, has one or more remaindermen or contingent beneficiaries, or any other ~~condition, so long as the individual trust is consistent with the purposes of this Article.~~ condition. The fact that the community trust agrees to serve as trustee does not mean the private trust meets the rules adopted by the Department or that the disabled beneficiary shall be eligible for public benefits.

"**§ 36D-8. ~~Irrevocability; impossibility of fulfillment.~~Pooled trust rules.**

~~A community trust for persons with severe chronic disabilities is irrevocable, but the trustees in their sole discretion may provide compensation for any contribution to the trust to any trustor who, upon good cause, withdraws a beneficiary designated by the trustor from the trust, or if it becomes impossible to fulfill the conditions of the trust with regard to an individual beneficiary for reasons other than the death of the beneficiary."~~

(a) The Department shall adopt rules, consistent with the purposes of this Chapter, governing the eligibility of pooled trust beneficiaries for State medical assistance and State-County Special Assistance.

(b) Rules adopted by the Department shall include pre-execution requirements, permissible trust terms, accounting and termination requirements, disbursements, and other

rules necessary for the implementation of this Chapter, and shall establish a trust instrument template to be used for the creation of each beneficiary's trust sub-account.

(c) Rules adopted by the Department shall specifically state the following:

(1) That the pooled trust is irrevocable;

(2) That the State shall be paid an amount equal to the total medical assistance paid on behalf of the disabled individual by the Department from funds remaining in the individual trust sub-account upon the death of the beneficiary or termination of the trust; and

(3) That if the pooled trust is to be subject to the Department's subrogated rights of recovery under G.S. 108A-57, such subrogated rights of recovery shall be satisfied in full prior to execution or judicial approval of the trust.

"§ 36D-9. Beneficiary's interest in trust not asset for income eligibility determination.

~~Notwithstanding any provisions of Chapter 108A of the General Statutes, the~~ The beneficiary's interest in any ~~community~~ pooled trust ~~is not considered to be~~ may not be considered an asset for the purpose of determining income eligibility for any publicly operated program, nor ~~shall that interest be reached in satisfaction of a claim for support and maintenance of the beneficiary. No agency shall reduce the benefits of services available to any individual because that person is the beneficiary of a community trust.~~ may any agency reduce the benefits or services available to any disabled individual because that person is the beneficiary of a pooled trust, provided that the trust complies with rules adopted by the Department. The beneficiary's interest shall not be reached in satisfaction of a claim for support and maintenance of the beneficiary.

"§ 36D-10. Trust not subject to law against perpetuities; restraints on alienation.

A community trust shall not be subject to or held to be in violation of any principle of law against perpetuities or restraints on alienation or perpetual accumulations of trusts.

"§ 36D-11. Settlement; trustee limitations.

(a) The community trust shall settle ~~a community~~ the pooled trust by filing a final accounting in the superior court. In addition, the trustee shall provide a final disbursement and accounting for an individual sub-account to the Division of Medical Assistance, Third Party Recovery Section, within 60 days of the date of the death of the beneficiary or the termination of the trust. An individual trust account shall terminate upon the death of the beneficiary.

(b) ~~In addition, at~~ At any time before the settlement of the final account, the community trust, the Secretary of State, or the Attorney General may bring an action for the dissolution of a nonprofit corporation in the superior court for the purpose of terminating the trust or merging it with another charitable trust.

(c) No trustee or any private individual is entitled to share in the distribution of any of the trust assets upon dissolution, merger, or settlement of the community trust. Upon dissolution, merger, or settlement, the superior court shall distribute all of the remaining net assets of the community trust in a manner that is consistent with the purposes of this ~~Article.~~Chapter."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 958
PROPOSED COMMITTEE SUBSTITUTE S958-CSST-27 [v.1]

5/8/2009 6:29:37 PM

Short Title: Disciplinary Proceedings/NC Medical Board. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING DISCIPLINARY PROCEEDINGS OF THE NORTH CAROLINA MEDICAL BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-14 is amended by adding the following new subsections to read:

"(h) No investigation of a licensee shall be initiated upon the direction of a single member of the Board. Investigations of licensees shall be initiated by a committee of the Board upon cause as determined by such committee. When such committee determines that an investigation of a licensee should be undertaken, the licensee shall be advised with particularity as to the reason(s) for the investigation being undertaken. The Board shall inform a licensee of any exculpatory evidence discovered during an investigation.

(i) At the time an investigation is initiated against a licensee, the Board shall provide to the licensee in writing a notice that informs the licensee: (1) of the existence of any complaint or other information forming the basis for initiation of an investigation as required by 90-14(h); (2) that the licensee has the right to counsel; (3) that if the licensee retains counsel all communications from the Board regarding the investigation will be made via the licensee's counsel; (4) the Board will provide to the licensee all exculpatory evidence developed in the course of the investigation; (5) that the licensee has a right to an informal conference with the Board to discuss the matter(s) giving rise to the investigation prior to final action by the Board; (6) that any statements made by the licensee to a Board investigator, agent or consultant during the course of the investigation may be used against the licensee in any hearing that might result from the investigation; (7) that the Board must complete its investigation within six months or provide an explanation as to why it must be extended and; and (8) any Board member involved in the investigation will not participate in the adjudication of any matter before the Board affecting the licensee.

(j) The Board shall complete any investigation initiated pursuant to this section no later than six months from the date the investigation was initiated unless the Board provides to the licensee a written explanation of the circumstances and reasons for extending the investigation.

(k) No Board member who is a member of the committee described in subsection (h) may thereafter participate in any way in the ultimate decision or adjudication by the Board affecting the licensee who is the subject of the investigation.

(l) The Board shall not seek to require of a licensee the taking of any action adversely impacting the licensee's medical practice or license without first giving notice of the proposed

action and the basis therefor to the licensee and affording the licensee an informal conference to discuss his/her practice and the reason(s) for the proposed action."

SECTION 2. G.S. 90-14.2 reads as rewritten:

"**§ 90-14.2. Hearing before disciplinary action.**

(a) Before the Board shall take disciplinary action against any license granted by it, the licensee shall be given a written notice indicating the ~~general nature of the charges, accusation, or~~ complaint made against ~~him,~~the licensee, which notice may be prepared by a committee or one or more members of the Board designated by the Board, and stating that ~~such~~ the licensee will be given an opportunity to be heard concerning ~~such charges or~~the complaint at a time and place stated in ~~such~~ the notice, or at a time and place to be thereafter designated by the Board, and the Board shall hold a public hearing not less than 30 days from the date of the service of ~~such~~ notice upon ~~such~~ the licensee, at which ~~such~~ the licensee may appear personally and through counsel, may cross examine witnesses and present evidence in ~~his~~ the licensee's own behalf. If a licensee retains counsel to appear on the licensee's behalf in any matter before the Board, the Board shall communicate to the licensee through the licensee's counsel. A physician who is mentally incompetent shall be represented at such hearing and shall be served with notice as herein provided by and through a guardian ad litem appointed by the clerk of the court of the county in which the physician ~~has his residence.~~resides. ~~Such~~ The licensee ~~or physician~~ may, if ~~he~~ the licensee desires, file written answers to the ~~charges or complaints~~ complaint ~~preferred against him~~ within 30 days after the service of ~~such~~ the notice, which answer shall become a part of the record but shall not constitute evidence in the case.

(b) In conducting hearings, the Board shall retain independent counsel to provide advice, as necessary, to the Board or any hearing committee constituted under G.S. 90-14.5(a) concerning matters of procedure and evidence."

SECTION 3. G.S. 90-14.5(a) reads as rewritten:

"**§ 90-14.5. Use of hearing committee and depositions; appointment of hearing officers.**

(a) The Board, in its discretion, may designate in writing three or more hearing officers to conduct hearings as a hearing committee to take evidence. A hearing committee shall be composed of a majority of Board licensees, including no more than one public member. The Board shall make a reasonable effort to include on the panel at least one physician licensed in the same or similar specialty as the licensee against whom the complaint has been filed. If a licensee who is to be the subject of a hearing shall so request in writing within thirty (30) days after being served with a notice of hearing, the hearing shall be conducted before the full Board, excepting those Board members who may not participate in a hearing as otherwise provided herein.

(b) Evidence and testimony may be presented at hearings before the Board or a hearing committee in the form of depositions before any person authorized to administer oaths in accordance with the procedure for the taking of depositions in civil actions in the superior court.

(c) The hearing committee shall submit a recommended decision that contains findings of fact and conclusions of law to the Board. Before the Board makes a final decision, it shall give each party an opportunity to file written exceptions to the recommended decision made by the hearing committee and to present oral arguments to the Board. No member of the Board who was involved in the investigation of the complaint or as a member of the hearing committee described in subsection (a) may participate as a member of the quorum of the Board that issues a final decision on the hearing committee's recommended decision. ~~A quorum of the Board will issue a final decision.~~

(d) Hearing officers are entitled to receive per diem compensation and reimbursement for expenses as authorized by the Board. The per diem compensation shall not exceed the amount allowed by G.S. 90-13.3."

SECTION 4. G.S. 90-14.6 reads as rewritten:

"**§ 90-14.6. Evidence admissible.**

(a) Except as otherwise provided in proceedings held pursuant to this Article the Board shall admit and hear evidence in the same manner and form as prescribed by law for civil actions. A complete record of such evidence shall be made, together with the other proceedings incident to ~~such~~ the hearing.

(b) Subject to the North Carolina Rules of Civil Procedure and Rules of Evidence, in proceedings held pursuant to this Article, the individual under investigation may call witnesses, including medical practitioners licensed in the United States with training and experience in the same field of practice as the individual under investigation and familiar with the ~~standard of care~~ standards of practice among members of the same health care profession ~~in North Carolina.~~ with similar training and experience situated in the same or similar communities at the time of the alleged act giving rise to the complaint against the individual under investigation. Witnesses shall not be restricted to experts certified by the American Board of Medical Specialties. Any expert witness called to testify on behalf of the Board shall meet the qualifications of G.S. 8C-1, Rule 702.

(b1) The Board shall require two concurring expert opinions before taking disciplinary action against a licensee in a quality of care action and any exceptions to the requirement shall be established pursuant to rules adopted by the Board. A Board member may not serve as an expert in investigation proceedings. A second expert reviewer shall review the first expert's preliminary report and other information associated with the complaint. The review by the second expert shall be independent of the first review, without knowledge by the second expert of the identity of the first expert and without any communication between the two experts. The Board shall document and make available to the licensee against who the complaint has been filed the qualifications of the experts offering opinions. The Board shall present all expert opinions in the Board's possession at the initial conference with the licensee.

(c) Subject to the North Carolina Rules of Civil Procedure and Rules of Evidence, statements contained in medical or scientific literature shall be competent evidence in proceedings held pursuant to this Article. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

(d) When evidence is not reasonably available under the Rules of Civil Procedure and Rules of Evidence to show relevant facts, then the most reliable and substantial evidence available shall be admitted.

(e) Any final decision of the Board shall be based upon a preponderance of the evidence admitted in the hearing."

SECTION 5. G.S. 90-14.8 reads as rewritten:

"**§ 90-14.8. Appeal from Board's decision taking disciplinary action on a license.**

(a) A physician against whom the Board imposes any public disciplinary sanction as authorized under G.S. 90-14(a) may appeal such action.

(b) A physician against whom any public disciplinary sanction is imposed by the Board ~~whose license is revoked or suspended by the Board~~ may obtain a review of the decision of the Board in the Superior Court of Wake ~~County~~County, or the county in which the physician resides, upon filing with the secretary of the Board a written notice of appeal within 20 days after the date of the service of the decision of the Board, stating all exceptions taken to the decision of the Board and indicating the court in which the appeal is to be heard.

(c) Within 30 days after the receipt of a notice of appeal as herein provided, the Board shall prepare, certify and file with the clerk of the Superior Court of Wake ~~County~~County, or the county in which the physician resides, the record of the case comprising a copy of the charges, notice of hearing, transcript of testimony, and copies of documents or other written

evidence produced at the hearing, decision of the Board, and notice of appeal containing exceptions to the decision of the Board."

SECTION 6. G.S. 90-14.13(a) reads as rewritten:

"(a) The chief administrative officer of every licensed hospital or other health care institution, including Health Maintenance Organizations, as defined in G.S. 58-67-5, preferred providers, as defined in G.S. 58-50-56, and all other provider organizations that issue credentials to physicians who practice medicine in the State, shall, after consultation with the chief of staff of that institution, report to the Board the following actions involving a physician's privileges to practice in that institution within 30 days of the date that the action takes effect:

(1) A summary revocation, summary suspension, or summary limitation of ~~privileges,~~privileges in matters related to professional competence or conduct, regardless of whether the action has been finally determined.

(2) A revocation, suspension, or limitation of privileges in matters related to professional competence or conduct that has been finally determined by the governing body of the institution.

(3) A resignation from practice or voluntary reduction of ~~privileges.~~privileges made during an active investigation or a peer review proceeding.

(4) Any action reportable pursuant to Title IV of P.L. 99-660, the Health Care Quality Improvement Act of 1986, as amended, not otherwise reportable under subdivisions (1), (2), or (3) of this subsection."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 958

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

S958-AST-17 [v.1]

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

Date _____ ,2009

Senator _____

moves to amend the bill on page 1, line 9 by inserting the following between "committee." and "When" on that line:

"The term 'investigation' as used in this subsection shall not include the initial communication between an investigator and a complainant or an investigator and then licensee that is subject of the complaint or that licensee's counsel to assess the merits of the complaint.";

and on page 1, line 20 by deleting the phrase "final action by the Board;" and substituting the phrase "initiation of any formal disciplinary proceeding by the Board;";

and on page 3, line 23 by inserting the following between "experts." and "The" on that line:

"However, the second expert shall not be subject to the limitations in subsection (b) of this section that require similar training and experience situated in the same or similar communities.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 464

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

S464-ASA-10 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S464-CSSA-30

Date _____,2009

Senator McKissick

moves to amend the bill on page 1, lines 32-34
by deleting those lines.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1026*
PROPOSED COMMITTEE SUBSTITUTE S1026-PCS35324-ST-28

Short Title: Local Government Tort Claims. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH CONSISTENCY AMONGST COUNTIES, CITIES, AND LOCAL SCHOOL BOARDS WITH RESPECT TO WAIVER OF GOVERNMENTAL IMMUNITY FOR NEGLIGENCE CLAIMS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 160A of the General Statutes is amended to add a new Article to read:

"Article 5A.

"Tort Liability.

"**§ 160A-114. Waiver of immunity; cap on liability.**

(a) Governmental immunity for all units of local government is waived for any act or omission occurring in the exercise of a governmental function.

(b) The waiver of governmental immunity in subsection (a) of this section shall not apply to any of the following claims:

(1) Any claim by an employee of the local government that is covered by the workers' compensation law.

(2) Any claim in connection with the assessment or collection of taxes.

(3) Any claim arising out of the exercise of legislative functions.

(4) Any claim arising out of the exercise of judicial or prosecutorial functions.

(5) Any claim for double, treble, punitive, or liquidated damages.

(6) Any claim arising out of or in connection with war, invasion, civil war, insurrection, rebellion, revolution, or terrorism.

(7) Any claim covered under G.S. 143-300.1.

(8) Any claim arising out of exposure to silica, asbestos, fungi, bacteria, mold, lead, or nuclear materials.

(9) Any claim for intentional torts.

(10) Any claim arising out of or in connection with war, invasion, civil war, insurrection, rebellion, revolution.

(c) The maximum amount any unit of local government shall pay cumulatively to all claimants on account of injury and damage to any one person arising out of any one occurrence shall be five hundred thousand dollars ($500,000), less any liability insurance purchased by the unit of local government. The maximum amount any unit of local government shall pay cumulatively to all claimants arising out of any one occurrence shall be two million dollars ($2,000,000), less any liability insurance purchased by the unit of local government.

(d) Except as expressly provided in this section, nothing in this section shall be construed to deprive any unit of local government of any defense to any tort claim lodged against it or to restrict, limit, or otherwise affect any defense that the unit of local government may have at common law or by virtue of any statute.

(e) Contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted shall be deemed to be a matter of defense on the part of the unit of local government against which the claim is asserted, and such unit of local government shall have the burden of proving that the claimant or the person in whose behalf the claim is asserted was guilty of contributory negligence.

(f) Except as provided in subsection (g) of this section, the public duty doctrine is an affirmative defense on the part of the unit of local government against which a claim is asserted if and only if the injury of the claimant is the result of any of the following:

(1) The alleged negligent failure to protect the claimant from the action of others or from an act of God by a law enforcement officer.

(2) The alleged negligent failure of an officer, employee, involuntary servant, or agent of the local government to perform a health or safety inspection required by statute.

(g) Notwithstanding subsection (f) of this section, the affirmative defense of the public duty doctrine may not be asserted in any of the following instances:

(1) Where there is a special relationship between the claimant and the officer, employee, involuntary servant, or agent of the unit of local government.

(2) When the unit of local government, through its officers, employees, involuntary servants, or agents, has created a special duty owed to the claimant and the claimant's reliance on that duty is causally related to the injury suffered by the claimant.

(3) Where the alleged failure to perform a health or safety inspection required by statute was the result of gross negligence.

(h) A unit of local government may contract to insure itself and any of its officers, agents, or employees against liability for wrongful death or negligent or intentional damage to person or property or against absolute liability for damage to person or property caused by an act or omission of the unit of local government or of any of its officers, agents, or employees when acting within the scope of their authority and the course of their employment. A unit of local government may use a funded reserve instead of purchasing insurance against liability for wrongful death, negligence, or intentional damage to personal property or absolute liability for damage to person or property caused by an act or omission of the unit of local government or any of its officers, agents, or employees acting within the scope of their authority and the course of their employment.

(i) For purposes of this section, the following definitions apply:

(1) Law enforcement officer. – A full-time or part-time employee or agent of a local government or an agent of the local government operating under an agreement with a local government who is any of the following:

a. Actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State or serving civil processes.

b. Possesses the power of arrest by virtue of an oath administered under the authority of the State.

c. Is a correctional officer performing duties of custody, supervision, and treatment to control and rehabilitate criminal offenders.

(2) Unit of local government. – All consolidated city-counties, counties, local school boards, municipalities, registers of deeds, sheriffs, and unified governments."

SECTION 2.(a) G.S. 115C-42 is repealed.

SECTION 2.(b) G.S. 115C-47(25) reads as rewritten:

"(25) To Secure Liability Insurance. – Local boards of education are authorized to secure liability ~~insurance, as provided in G.S. 115C-42, so as to waive their immunity for liability for certain negligent acts of their employees.~~insurance."

SECTION 2.(c) G.S. 115C-243(b)(3) reads as rewritten:

"(3) That adequate liability insurance is maintained ~~under G.S. 115C-42~~ to insure the board of education, and that adequate insurance is maintained to protect the property of the board of education. The minimum limit of liability insurance shall not be less than the maximum amount of damages which may be awarded under the Tort Claims Act, G.S. 143-291. The costs of said insurance shall be paid by the agency contracting for the use of the bus, either directly or through the fee established by the agreement."

SECTION 2.(d) G.S. 115C-247 reads as rewritten:

"**§ 115C-247. Purchase of activity buses by local boards.**

The several local boards of education in the State are hereby authorized and empowered to take title to school buses purchased with local or community funds for the purpose of transporting pupils to and from athletic events and for other local school activity purposes, and commonly referred to as activity buses.

Each local board of education that operates activity buses shall adopt a policy relative to the proper use of the vehicles. The policy shall permit the use of these buses for travel to athletic events during the regular season and playoffs and for travel to other school-sponsored activities.

The provisions of ~~G.S. 115C-42~~ Chapter 158A of the General Statutes, shall be fully applicable to the ownership and operation of such activity school buses. Activity buses may also be used as provided in G.S. 115C-243."

SECTION 2.(e) G.S. 115C-255 reads as rewritten:

"**§ 115C-255. Liability insurance and waiver of immunity as to certain acts of bus drivers.**

The securing of liability insurance and the waiver of immunity as to certain torts of school bus drivers, school transportation service vehicle drivers and school activity bus drivers, is subject to the provisions of ~~G.S. 115C-42,~~ Chapter 158A of the General Statutes, except when such vehicles are operated with funds from the State Public School Fund."

SECTION 2.(f) G.S. 115C-262 reads as rewritten:

"**§ 115C-262. Liability insurance and tort liability.**

Liability insurance and tort liability of local boards of education for actions arising out of activities conducted pursuant to this Part, are subject to the provisions of ~~G.S. 115C-42.~~Chapter 158A of the General Statutes."

SECTION 3. G.S. 153A-435 is repealed.

SECTION 4.(a) G.S. 160A-485 is repealed.

SECTION 4.(b) G.S. 160A-627 reads as rewritten:

"**§ 160A-627. Civil liability.**

(a) Except as provided in G.S. 160A-626, the Authority shall be deemed a ~~city~~ municipality for purposes of civil liability pursuant to ~~G.S. 160A-485.~~ G.S. 160A-114. Governmental immunity of the Authority is waived to a minimum of twenty million dollars ($20,000,000) per single accident or ~~incident.~~incident for purposes of G.S. 160A-114(b).

(b) The Authority shall maintain a minimum of twenty million dollars ($20,000,000) per single accident or incident of liability insurance. ~~Participation in a local government risk~~

~~pool pursuant to Article 23 of Chapter 58 of the General Statutes shall be deemed to be the purchase of insurance for the purpose of this section.~~"

SECTION 5. This act becomes effective October 1, 2010, and applies to claims arising on or after that date.

SENATE JUDICIARY I COMMITTEE
(Civil)

May 13, 2009
12:30 p.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Wednesday, May 13, 2009, at 12:30 p.m., in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin Nesbitt, Vice-Chairmen Dan Clodfelter, Pete Brunstetter, R. C. Soles, and Josh Stein; members Senators Phil Berger, Andrew Brock, Harry Brown, Malcolm Graham, Clark Jenkins, Ellie Kinnaird, Floyd McKissick, Tony Rand, David Rouzer, Richard Stevens, and Jerry Tillman; Staff Counsel Erika Churchill, Giles Perry, Susan Sitze, and Bill Patterson; Committee Assistant Jan Lee.

Chairman Nesbitt called the meeting to order. A Proposed Committee Substitute for S.B. 1056 Require Firearms Certification/Bail Bondsman, was distributed to the members and Senator Stein made a motion to adopt it for discussion. Senator Larry Shaw was recognized to explain the bill and was assisted by Staff Counsel Susan Sitze. There was considerable discussion and concern about the insurance requirements. Mr. Mike Mann representing the North Carolina Bail Agents Association said they did not request this legislation and were concerned about the insurance requirements. The bill was displaced while preparing an amendment.

Senator Kinnaird was recognized to speak on S.B. 491 – Expunge Nonviolent Crimes. The bill had three amendments and Senator Kinnaird moved for adoption of the amendments and the motion passed. Senator Weinstein was recognized to speak on the bill. He said he introduced a similar bill during the 2007 Session of the General Assembly and it didn't make it out of the Senate. He spoke passionately about the need for this bill. Staff Counsel Susan Sitze was recognized to give an analysis of the bill. Senator Soles moved to roll the amendments into a Proposed Committee Substitute and re-refer the bill to the Committee on Finance. The motion passed.

S.B. 1056 – Require Firearms Certification/Bail Bondsman was once again before the committee. An amendment by motion of Senator Stevens was before the committee and adopted for consideration. Senator Phil Berger moved that the amendment and bill be rolled into a Proposed Committee Substitute and given a favorable report and unfavorable as to the original bill and the motion passed. The Bill will be referred to the Committee on Finance.

Senator Phil Berger was recognized to explain S.B. 726 – Amend House Arrest Laws/Adult/Juvenile. A Proposed Committee Substitute for S.B. 625 was distributed to the members and adopted for consideration. Senator Berger explained the PCS for S.B. 726 and moved to give it a favorable report and unfavorable as to the original bill. Keith Sutton with the Department of Juvenile Justice said that they had looked at S.B. 726 and

the Counselor could approve the Court Counselor. Senator Berger moved to amend the bill and the motion passed. Senator Rand moved for favorable as to the new PCS and unfavorable as to the original bill. The motion passed.

Chairman Nesbitt recognized Senator Phil Berger to explain S.B. 158 – Modify Felony Death By Vehicle Penalty. A Proposed Committee Substitute for S.B. 158 was distributed to the members and Senator Berger moved that it be adopted for consideration. The motion passed. Staff Counsel Giles Perry was recognized to explain the bill. Senator Rand ask how much the bill would affect the severity of the penalty. Senator Rand felt that the penalty should be left as it is. Senator Nesbitt said that since this bill increases penalties, it will be re-referred to the Committee on Appropriations. Senator Nesbitt recognized Ben Davis, D.A. from Cumberland County who spoke in favor of the bill. The bill was displaced because it was to be re-referred to the Appropriations Committee and not subject to the Crossover deadline.

Senator Rouzer was recognized explain S.B. 900 – Enable Registers of Deeds to Protect Identity. A Proposed Committee Substitute was distributed to the committee and Senator Rouzer moved for the adoption for consideration After questions and discussion Senator Stein moved for a favorable report for the Proposed Committee Substitute for S.B. 900 and unfavorable as to the original bill and the motion passed.

Senator Boseman was recognized to explain S.B. 800 which had been appointed to a subcommittee. A Proposed Committee Substitute was distributed and Senator Stein moved that it be adopted for consideration. The motion passed. Staff Counsel Susan Sitze was asked to explain the bill. John Midgett with the Police Benevolent Association was recognized and spoke in favor of the bill. After extensive discussion S.B. 800 PCS was withdrawn from consideration.

Senator Boseman was recognized to explain S.B. 527 – Amend Second Degree Rape & Sexual Offense. Staff Counsel Susan Sitze gave an analysis of the bill and discussion followed. The D.A. from New Hanover County, Ben Davis spoke in favor of the bill. The bill was displaced.

Senator McKissick was recognized to explain S.B. 586 – File Lis Pendens for Certain Erosion Actions. Senator McKissick explained the bill and after discussion Senator Jenkins moved for a favorable report and the motion passed.

Chairman Nesbitt recognized Mr. John Stadler with the Sentencing Commission to speak on Senator Kinnaird's S.B. 488 – Establish Proportionate Sentence Lengths, S.B. 489 – Even Out Prior Criminal Record Points, and S.B. 490 – Adjust B1-E Felony Penalties. Someone from the Department of Corrections and the Sheriff's Association spoke on the bills and after questions and discussion by the committee Senator Jenkins moved that the three bills be given a favorable report and referred to the Committee on Appropriation, and the motion carried.

The meeting adjourned.

Copies of 491, Bill Analysis for S.B. 491, S.B. 1056, S.B. 726, S.B. 158, Bill Analysis for S.B. 158, P.C.S. for S.B. 900, S.B. 527, S.B. 586, Bill Analysis for S.B. 586, S.B. 488, S.B. 489, S.B. 490, Bill Analysis for S.B. 488, 489, 490 are attached to these Minutes as Attachments 1,2,3,4,5,6,7,8,9,10,11,12,13,14, respectively.

Respectfully Submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W. Lee

Janette W. Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 491

Short Title:	Expunge Nonviolent Crimes.	(Public)
Sponsors:	Senators Kinnaird; Atwater, Berger of Franklin, Bingham, Dannelly, Dorsett, Foriest, Graham, Hartsell, McKissick, Nesbitt, Vaughan, and Weinstein.	
Referred to:	Judiciary I.	

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR CERTAIN NONVIOLENT CRIMINAL OFFENSES UPON APPLICATION AND A FEE, TO ALLOW DISCLOSURE OF EXPUNGED INFORMATION TO LAW ENFORCEMENT AGENCIES AND OTHER SPECIFIED AGENCIES FOR EMPLOYMENT AND LICENSING PURPOSES AND TO REQUIRE THOSE AGENCIES TO MAINTAIN THE CONFIDENTIALITY OF THE EXPUNGED INFORMATION, AND TO MAKE CONFORMING CHANGES TO EXISTING EXPUNCTION STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-150. Expunction of records for conviction of certain nonviolent criminal offenses.**

(a) A person may file a petition in the court where the person was convicted for expunction of a felony conviction from the person's criminal record if all of the following criteria are met:

(1) The person, at the time of the felony offense, had not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state.

(2) The conviction is for a felony violation of any of the following:

a. G.S. 14-54.

b. G.S. 14-56.

c. G.S. 14-71.1.

d. G.S. 14-100 where the thing of value is less than one hundred thousand dollars ($100,000).

e. G.S. 90-95(d)(4).

(3) The person, at the time of the petition, has no convictions other than the conviction to be expunged and traffic violations under the laws of the United States, the laws of this State, or any other state.

(b) The petition may not be filed earlier than 10 years after the date of the felony conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The petition shall contain all of the following:

(1) An affidavit by the petitioner stating all of the following:

a. That the petitioner has been of good moral character for the 10-year period since the date of the felony conviction in question.

b. That the petitioner had not been convicted of any other felony or any misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

c. That the petitioner has no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner outstanding.

(2) Verified affidavits of two persons, who are not related to the petitioner or to each other by blood or marriage and were not involved in the actions giving rise to the felony conviction in question, that:

a. The person knows the character and reputation of the petitioner in the community in which the petitioner lives.

b. The petitioner's character and reputation are good.

c. The petitioner is and has been of good moral character for the 10-year period since the date of the felony conviction in question.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing all of the following:

a. A State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual.

b. A search by the Department of Justice for any outstanding warrants or pending criminal cases.

c. A search of the confidential record of expunctions maintained by the Administrative Office of the Courts.

(c) The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection to the petition and shall be duly notified as to the date of the hearing on the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing. The application required by subdivision (b)(4) of this section shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(d) The court in which the petition was filed may take any of the following steps and may consider at least the following issues in rendering a decision upon a petition for expunction of records of a felony conviction under this section:

(1) Call upon a probation officer for additional investigation or verification of the petitioner's conduct during the 10-year period since the date of conviction of the felony conviction in question.

(2) Review the results of the State and national criminal record check by the Department of Justice and Administrative Office of the Courts.

(3) Review the amount of restitution, if any, made by the petitioner to the victim of the felony conviction to be expunged and give consideration to whether or not restitution was paid in full.

(4) Review any other information the court deems relevant, including affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of the felony committed by the petitioner.

(e) The court may order that the petitioner be restored, in the contemplation of the law, to the status the petitioner occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

(1) The petitioner has remained of good moral character 10 years from the date of conviction of the felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.
(2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, the laws of this State, or any other state.
(3) The petitioner has no outstanding warrants or pending criminal cases.
(4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.
(5) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

(f) No person as to whom an order has been entered pursuant to subsection (e) of this section shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. Persons pursuing certification under the provisions of Chapters 17C or 17E of the General Statutes shall disclose any and all felony convictions to the certifying commission regardless of whether or not the felony convictions were expunged under this section.

(g) The court shall also order that the felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge that agency's records of the felony conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting law enforcement agency. The sheriff, chief of police, or head of any other arresting law enforcement agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(h) A person as to whom an order has been entered pursuant to subsection (e) of this section may notify any other applicable State or local government agency of the order, and that State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The person may also request that the State or local government agency reverse any administrative actions taken against that person as a result of the charges or convictions expunged, and the State or local government agency shall use its discretion in deciding whether or not to reverse, in whole or part, any action taken against that person. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(i) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Administrative Office of the Courts the names of those persons granted expunctions under this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted expunctions. The information contained in the file shall be disclosed only as follows:

(1) To judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.
(2) To federal, State, and local law enforcement agencies for employment purposes only.
(3) To the North Carolina Criminal Justice Education and Training Standards Commission for certification purposes only.
(4) To the North Carolina Sheriffs' Education and Training Standards Commission for certification purposes only.

(5) To federally insured depository institutions for employment purposes only.
(6) To the North Carolina State Bar and the Board of Law Examiners for licensing purposes only.
(7) To the North Carolina State Board of Certified Public Accountant Examiners for licensing purposes only.
(8) To local boards of education for employment purposes only.
(9) To the Department of Health and Human Services for licensing purposes, employment purposes, and placement purposes if a criminal history check is mandated for the license or placement.
(10) To the North Carolina Medical Board for licensing purposes only.
(11) To the North Carolina Real Estate Commission for licensing purposes only.
(12) To the North Carolina Appraisal Board for licensing purposes only.

(j) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of two hundred dollars ($200.00) at the time the petition is filed. One hundred dollars ($100.00) of the fee collected under this subsection shall be remitted to the North Carolina Department of Justice to pay the costs of the State Bureau of Investigation purging records pursuant to receipt of an order of expunction. The remaining one hundred dollars ($100.00) of the fee shall be remitted to the Administrative Office of the Courts to pay the costs associated with implementation of the provisions of this section. This subsection does not apply to petitions filed by an indigent."

SECTION 2. G.S. 17C-13 reads as rewritten:

"**§ 17C-13. Pardons.**

(a) When a person presents competent evidence that he has been granted an unconditional pardon for a crime in this State, any other state, or the United States, the Commission may not deny, suspend, or revoke that person's certification based solely on the commission of that crime or for an alleged lack of good moral character due to the commission of that crime.

(b) Notwithstanding G.S. 15A-150, the Commission may gain access to a person's felony conviction records, including those maintained by the Administrative Office of the Courts in its confidential files containing the names of persons granted expunctions. The Commission may deny, suspend, or revoke a person's certification based solely on that person's felony conviction, whether or not the felony conviction was expunged."

SECTION 3. G.S. 17E-12 reads as rewritten:

"**§ 17E-12. Pardons.**

(a) When a person presents competent evidence that the person has been granted an unconditional pardon of innocence for a crime in this State, any other state, or the United States, the Commission may not deny, suspend, or revoke that person's certification based solely on the commission of that crime or for alleged lack of good moral character due to the commission of that crime.

(b) Notwithstanding G.S. 15A-150, the Commission may gain access to a person's felony conviction records, including those maintained by the Administrative Office of the Courts in its confidential files containing the names of persons granted expunctions. The Commission may deny, suspend, or revoke a person's certification based solely on that person's felony conviction, whether or not the felony conviction was expunged."

SECTION 4. This act becomes effective December 1, 2009, and applies to applications for expunction of records made on or after that date.

SENATE BILL 491: Expunge Nonviolent Crimes

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 10, 2009
Introduced by:	Sen. Kinnaird	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 491 provides a procedure for expunction of convictions for specified nonviolent felonies from the criminal record of a first time offender if the person has no other felony or misdemeanor convictions other than traffic violations.***

[As introduced, this bill was identical to H1064, as introduced by Reps. Hall, Bordsen, Crawford, Bryant, which is currently in House Judiciary I, if favorable, Finance.]

CURRENT LAW: Article 5 of Chapter 15A ("Criminal Procedure Act") provides procedures for the expunction of criminal records of certain criminal charges or convictions. Expunction is the process by which a record of criminal conviction is removed by order of the court, and the individual is restored to the status he or she occupied before the arrest or indictment.

BILL ANALYSIS:

Section 1: Section 1 of the bill adds a new section to Article 5. The proposed new G.S. 15A-150 allows expunction of certain nonviolent felonies from the records of first time offenders with no previous or subsequent felony or misdemeanor convictions other than traffic violations.

The bill's expunction procedure is available only for convictions of a felony violation of the following:

- G.S. 14-54 (breaking or entering buildings generally)
- G.S. 14-56 (breaking or entering into or breaking out of railroad cars, motor vehicles, trailers, aircraft, boats, or other watercraft)
- G.S. 14-71.1 (possessing stolen goods)
- G.S. 14-100 (obtaining property by false pretense) where the thing of value is less than $100,000
- G.S. 90-95(d)(4) (felony possession of marijuana)

The bill's procedure is similar to existing procedures for expunction of records under Article 5. The petition may not be filed earlier than 10 years after the date of conviction or after the time that any active sentence, period of probation, or post-release supervision has been served, whichever occurs later.

The petition must contain the following:

1) An affidavit of good moral character by the petitioner for the 10 years following conviction, stating that the petitioner has not been convicted of any felony or misdemeanor charge, other than traffic violations, and that there are no outstanding orders or civil judgments for restitution.

2) Two affidavits of good moral character from persons unrelated to petitioner;

3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted; and

4) An application authorizing a State and national criminal record check, a search for outstanding warrants or pending criminal cases by the Department of Justice, and a search of expunction

records maintained by the Administrative Office of the Courts, with the results reported to the court.

The petition shall be served on the district attorney, who has 30 days to file any objections, and who must receive notice of the petition hearing date. The district attorney is directed to make his or her best efforts to notify the victim, if any, of the request for expunction prior to the hearing date.

The court is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the ten years in question. The court may also review the records check results, the restitution, if any, paid by the petitioner to the victim, and any other relevant information.

A person whose record is expunged under this section will not be guilty of perjury for failing to disclose the expunged conviction. However, persons seeking to become criminal justice officers or employees of a county sheriff under Chapter 17C or Chapter 17E shall remain obligated to disclose any and all felony convictions to the certifying commission, even if expunged under this section.

If the court finds that the petitioner has met all of the requirements, the court may order that the petitioner be restored to the status he or she had before the arrest or indictment and that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies to expunge their records.

Upon notification by the successful petitioner of the expungement order, any other applicable State or local government agency is required to expunge from its records any entries made as a result of the conviction order expunged under this section. Department of Justice DNA records and samples stored in the State DNA database and the State DNA Databank, however, shall not be expunged or destroyed as a result of any order for expunction of records issued under this section.

A State or local governmental agency which has taken any administrative actions based upon the conviction expunged may, in its discretion, reverse any such action taken against the person whose conviction has been expunged.

The clerk of superior court in each county shall be required to file with the AOC the names of those persons granted expunctions under this section and the AOC shall maintain a confidential file containing the names of persons granted expunctions. This information shall be disclosed only:

- to judges of the General Court of Justice of North Carolina for the purpose of determining if any person charged with an offense has been previously given a discharge;
- for employment purposes only, to law enforcement agencies, The North Carolina Criminal Justice Education and Training Standards Commission, and The North Carolina Sheriffs' Education and Training Standards Commission, federally insured depository institutions, and local boards of education;
- for licensing purposes only, to the North Carolina Bar, the Board of Law Examiners, the State Board of Certified Public Accountant Examiners, the North Carolina Medical Board, the North Carolina Real Estate Commission, and the North Carolina Appraisal Board; and
- to the Department of Health and Human Services for licensing, employment and placement purposes, if a criminal history check is mandated for the license or placement.

The petitioner must pay a fee of $200.00 unless the petitioner is indigent. $100 is remitted to the North Carolina Department of Justice to pay the costs of SBI purging of records pursuant to an order of expunction and $100 is remitted to the Administrative Office of the Courts to pay costs of implementing the requirements of this section.

Sections 2 and 3: Sections 2 and 3 of the bill amend sections of Chapters 17C and 17E to clarify that the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission may deny, suspend, or revoke a person's certification based solely upon a felony conviction, whether or not that conviction was expunged.

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to applications for expunction of records made on or after that date.

BACKGROUND: Article 5 ("Expunction of Records") of Chapter 15A ("Criminal Procedure Act") currently provides procedures for expunging records of criminal convictions in the following cases:

- G.S. 15A-145 ("Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors");
- G.S. 15A-146 ("Expunction of records when charges are dismissed or there are findings of not guilty");
- G.S. 15A-147 ("Expunction of records when charges are dismissed or there are finding of not guilty as a result of identity fraud");
- G.S. 15A-148 ("Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted"); and
- G.S. 15A-149 ("Expunction of records when pardon of innocence is granted").

Staff Attorneys Jennifer McGinnis, Ben Popkin, Susan Sitze, and Heather Fennell substantially contributed to this summary.

S491-SMTG-51(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1056
PROPOSED COMMITTEE SUBSTITUTE S1056-CSLU-6 [v.1]

5/13/2009 12:27:11 PM

Short Title: Require Firearms Certification/Bail Bondsman. (Public)

Sponsors:

Referred to:

March 31, 2009

A BILL TO BE ENTITLED

AN ACT REQUIRING A BAIL BONDSMAN TO OBTAIN A FIREARMS REGISTRATION PERMIT AND FIREARMS TRAINING AND MAINTAIN LIABILITY INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 71 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-71-51. Armed licensee required to have firearm registration permit; firearms training; liability insurance.**

(a) It shall be unlawful for any person acting as a bail bondsman to carry a firearm in the performance of his or her duties as an armed bail bondsman without first having met the qualifications of this section and having been issued a firearm registration permit by the Attorney General. For purposes of this section, an 'armed bail bondsman' is a bail bondsman licensed under this Article who, at any time, wears, carries, or possesses a firearm in the performance of duty.

(b) The applicant for a firearm registration permit shall submit an application to the Attorney General on a form provided by the Attorney General.

(c) Each firearm registration permit issued under this section to an armed bail bondsman shall be in the form of a pocket card designed by the Attorney General and shall identify the name of the armed bail bondsman. A firearm registration permit issued to an armed bail bondsman expires one year after the date of its issuance and shall be renewed annually unless the permit holder's employment terminates before the expiration of the permit. If an armed bail bondsman terminates his or her employment, the firearm registration permit expires and shall be returned to the Attorney General within 15 working days of the date of termination. The Attorney General may require all permit holders to complete continuing education courses approved by the Attorney General before renewal of their permits.

(d) While carrying a firearm and engaged in practice as a bail bondsman, the armed bail bondsman shall carry the firearms registration permit issued by the Attorney General, together with valid identification, and shall disclose to any law enforcement officer that the person holds a valid permit and is carrying a firearm, whether concealed or in plain view, when approached or addressed by the law enforcement officer, and shall display both the permit and the proper identification upon the request of a law enforcement officer.

(e) The Attorney General may suspend, revoke, or deny a firearm registration permit if the holder or applicant has been convicted of any crime involving moral turpitude or any crime involving the illegal use, carrying, or possession of a deadly weapon or for violation of this

section or rules adopted by the Attorney General to implement this section. The Attorney General may summarily suspend a firearm registration permit pending resolution of charges involving the illegal use, carrying, or possession of a firearm lodged against the holder of the permit.

(f) The Attorney General shall establish a firearms training program for licensees to be conducted by agencies and institutions approved by the Attorney General. The Attorney General may approve training programs if the instructors of the training program are certified trainers approved by the Attorney General and the training program meets the following criteria:

(1) Complete a basic training course consisting of a minimum of 20 hours of classroom training that includes all of the following:
  a. Legal limitations on the use of handguns and on the powers and authority of an armed bail bondsman.
  b. Familiarity with this section.
  c. Range firing and procedure and handgun safety and maintenance.
  d. Any other topics of armed bail bondsman training curriculum that the Attorney General deems necessary.

(2) Fire a minimum qualifying score of eighty percent (80%) on a target course approved by the Attorney General.

(3) Complete a refresher course and requalify on the prescribed target course before renewing the firearm registration permit.

(4) Complete any other training requirements deemed necessary by the Attorney General.

(g) The Attorney General may not issue a firearm registration permit to an applicant until the applicant submits evidence satisfactory to the Attorney General that the applicant:

(1) Has satisfactorily completed an approved training course.

(2) Meets all the qualifications established by this section and by the rules adopted to implement this section.

(3) Is mentally and physically capable of handling a firearm within the guidelines set forth by the Attorney General.

(h) All fees collected pursuant to G.S. 58-71-55, shall be expended, under the direction of the Attorney General, for the purpose of defraying the expense of administering the firearms provisions of this Article.

(i) The Attorney General is authorized to adopt rules to implement this section, including rules for periodic requalification with the firearm and for the maintenance of records relating to persons issued a firearm registration permit by the Attorney General.

(j) If the licensee carries a firearm while engaged in bail bondsman activities, the licensee shall obtain and file with the Attorney General evidence of a policy of liability insurance that provides for the following minimum coverage: fifty thousand dollars ($50,000) due to bodily injury or death of one person as a result of the negligent act or acts of the principal insured or the principal insured's agents operating in the course and scope of employment; one hundred thousand dollars ($100,000) due to bodily injury or death of two or more persons as the result of the negligent act or acts of the principal insured or the principal insured's agents operating in the course and scope of the agency; and twenty thousand dollars ($20,000) due to injury to or destruction of property of others as the result of the negligent act or acts of the principal insured or the principal insured's agents operating in the course and scope of the agency. A licensee is deemed to be 'carrying a firearm' for purposes of this section while engaged in bail bondsman services if the licensee has a firearm on the licensee's person or in the automobile the licensee is using to act as a bail bondsman.

(k) An insurance carrier shall have the right to cancel the policy of liability insurance upon giving a 30-day notice to the Attorney General. However, cancellation of the policy shall

not affect any liability on the policy which accrued before the cancellation. The policy of liability shall be approved by the Attorney General as to form, execution, and terms.

(l) Persons licensed as runners under this Article shall not be required to obtain a certificate of liability insurance.

(m) Every bail bondsman licensee carrying a firearm while engaged in bail bondsman activities shall at all times maintain on file with the Attorney General the certificate of insurance required by this Article in full force and effect and upon failure to do so, the license of the licensee shall be automatically suspended and shall not be reinstated until an application, in the form prescribed by the Attorney General, is filed together with a proper insurance certificate. The Attorney General shall notify the Commissioner when the license of a licensee has been suspended for the licensee's failure to comply with this subsection.

No cancellation or refusal to renew by an insurer of a licensee under this Article shall be effective unless the insurer has given the insured licensee notice of the cancellation or refusal to renew. Upon termination of insurance coverage for the licensee, the insurer shall give notice to the Attorney General."

SECTION 2. G.S. 58-71-55 reads as rewritten:

"**§ 58-71-55. License fees.**

A nonrefundable license fee of one hundred dollars ($100.00) shall be paid to the Commissioner with each application for license as a bail bondsman and a license fee of sixty dollars ($60.00) shall be paid to the Commissioner with each application for license as a runner. A nonrefundable application fee of fifty dollars ($50.00) shall be paid to the Attorney General with each application for a firearm registration permit for an armed bail bondsman."

SECTION 3. A bail bondsman licensed under Article 71 of Chapter 58 of the General Statutes and carrying a firearm while engaged in practice as a bail bondsman in this State on or before October 1, 2009, shall have 90 days after that date to comply with the applicable requirements of G.S. 58-71-51, as enacted in Section 1 of this act.

SECTION 4. This act becomes effective October 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 726
PROPOSED COMMITTEE SUBSTITUTE S726-CSSA-46 [v.1]

5/13/2009 12:08:45 PM

Short Title: Amend House Arrest Laws/Adult/Juvenile. (Public)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT HOUSE ARREST MAY BE IMPOSED AS A CONDITION OF PRETRIAL RELEASE; TO PROVIDE THAT THE COURT MAY AUTHORIZE AN OFFENDER UNDER ELECTRONIC HOUSE ARREST TO LEAVE THE OFFENDER'S RESIDENCE FOR SPECIFIC PURPOSES AND THE COURT OR PROBATION OFFICER MAY MODIFY THOSE CONDITIONS; AND TO AMEND THE DEFINITION OF HOUSE ARREST UNDER JUVENILE LAW TO STATE THE SPECIFIC PURPOSES FOR WHICH A JUVENILE MAY BE AUTHORIZED TO LEAVE THE JUVENILE'S RESIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-1501(12) reads as rewritten:

"In this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings. The singular includes the plural, unless otherwise specified.

...

(12) House arrest. – A requirement that the juvenile remain at the juvenile's residence unless the court or the juvenile court counselor authorizes the juvenile to leave for ~~specific purposes.~~school, counseling, work, or other similar specific purposes, provided the juvenile is accompanied in transit by a parent or legal guardian.

...."

SECTION 2. G.S. 15A-531 is amended by adding a new subdivision to read:

"(5a) House arrest with electronic monitoring. – Pretrial release in which the offender is required to remain at his or her residence unless the court authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically."

SECTION 3. G.S. 15A-534(a) reads as rewritten:

"**§ 15A-534. Procedure for determining conditions of pretrial release.**

(a) In determining conditions of pretrial release a judicial official must impose one of the following conditions:

(1) Release the defendant on his written promise to appear.

(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.

(3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.

(4) 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.

(5) House arrest with electronic monitoring.

If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release."

SECTION 4. G.S. 15A-534(b) reads as rewritten:

"(b) The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless he determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official must then impose condition (4) or (5) in subsection (a) above instead of condition (1), (2), or (3), and must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a)."

SECTION 5. G.S. 15A-535(a) reads as rewritten:

"(a) Subject to the provisions of this Article, the senior resident superior court judge for each district or set of districts as defined in G.S. 7A-41.1(a) in consultation with the chief district court judge or judges of all the district court districts in which are located any of the counties in the senior resident superior court judge's district or set of districts, must devise and issue recommended policies to be followed within each of those counties in determining whether, and upon what conditions, a defendant may be released before trial, and may include in such policies, or issue separately, a requirement that each judicial official who imposes condition (4) or (5) in G.S. 15A-534(a) must record the reasons for doing so in writing."

SECTION 6. G.S. 15A-1340.11(4a) reads as rewritten:

"The following definitions apply in this Article:

...

(4a) House arrest with electronic monitoring. – Probation in which the offender is required to remain at his or her ~~residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training.~~residence. The court, in the sentencing order, may authorize the offender to leave the offender's residence for employment, counseling, a course of study, vocational training or other specific purposes and may modify that authorization. The probation officer may authorize the offender to leave the offender's residence for specific purposes not authorized in the court order upon approval of the probation officer's supervisor. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

...."

SECTION 7. G.S. 15A-1343(b1)(3c) reads as rewritten:

"(b1) Special Conditions. – In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

...

(3c) Remain at his or her ~~residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training.~~residence. The court, in the

sentencing order, may authorize the offender to leave the offender's residence for employment, counseling, a course of study, vocational training or other specific purposes and may modify that authorization. The probation officer may authorize the offender to leave the offender's residence for specific purposes not authorized in the court order upon approval of the probation officer's supervisor. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically and to pay a fee for the device as specified in subsection (c2) of this section.

...."

SECTION 8. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 158
PROPOSED COMMITTEE SUBSTITUTE S158-PCS75255-RW-41

Short Title: Modify Felony Death By Vehicle Penalty. (Public)

Sponsors:

Referred to:

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR FELONY DEATH BY VEHICLE AND FELONY SERIOUS INJURY BY VEHICLE AND TO REPEAL AGGRAVATED DEATH BY VEHICLE AND AGGRAVATED SERIOUS INJURY BY VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by vehicle; felony serious injury by vehicle; aggravated offenses; repeat felony death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. – A person commits the offense of felony death by vehicle if:

(1) The person unintentionally causes the death of another person,

(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death.

(a2) Misdemeanor Death by Vehicle. – A person commits the offense of misdemeanor death by vehicle if:

(1) The person unintentionally causes the death of another person,

(2) The person was engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death.

(a3) Felony Serious Injury by Vehicle. – A person commits the offense of felony serious injury by vehicle if:

(1) The person unintentionally causes serious injury to another person,

(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and

(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the serious injury.

~~(a4) Aggravated Felony Serious Injury by Vehicle. – A person commits the offense of aggravated felony serious injury by vehicle if:~~

~~(1) The person unintentionally causes serious injury to another person,~~

~~(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,~~

~~(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the serious injury, and~~

~~(4) The person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.~~

~~(a5) Aggravated Felony Death by Vehicle. A person commits the offense of aggravated felony death by vehicle if:~~

~~(1) The person unintentionally causes the death of another person,~~

~~(2) The person was engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2,~~

~~(3) The commission of the offense in subdivision (2) of this subsection is the proximate cause of the death, and~~

~~(4) The person has a previous conviction involving impaired driving, as defined in G.S. 20-4.01(24a), within seven years of the date of the offense.~~

(a6) Repeat Felony Death by Vehicle Offender. – A person commits the offense of repeat felony death by vehicle if:

(1) The person commits an offense under subsection (a1) ~~or subsection (a5)~~ of this section; and

(2) The person has a previous conviction under:

a. Subsection (a1) of this ~~section;~~section; or

~~b. Subsection (a5) of this section; or~~

c. G.S. 14-17 or G.S. 14-18, and the basis of the conviction was the unintentional death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2.

The pleading and proof of previous convictions shall be in accordance with the provisions of G.S. 15A-928.

A person convicted under this subsection shall be subject to the same sentence as if the person had been convicted of second degree murder."

(b) Punishments. – Unless the conduct is covered under some other provision of law providing greater punishment, the following classifications apply to the offenses set forth in this section:

~~(1) Aggravated felony death by vehicle is a Class D felony.~~

(2) Felony death by vehicle is a Class ~~E~~ D felony.

~~(3) Aggravated felony serious injury by vehicle is a Class E felony.~~

(4) Felony serious injury by vehicle is a Class ~~F~~ E felony.

(5) Misdemeanor death by vehicle is a Class 1 misdemeanor.

(c) No Double Prosecutions. – No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

SENATE BILL 158:
Modify Felony Death By Vehicle Penalty

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 10, 2009
Introduced by:	Sen. Berger of Rockingham	**Prepared by:**	Giles S. Perry Committee Counsel
Analysis of:	PCS to First Edition S158-CSRW-41		

SUMMARY: ***Senate Bill 158 repeals Aggravated Felony Death by Vehicle and Aggravated Felony Serious Injury by Vehicle and increases the penalty for Felony Death by Vehicle and Felony Serious Injury by Vehicle.***

CURRENT LAW: Current G.S. 20-141.4 sets out the elements and penalties for the following crimes:

- Felony Death by Vehicle (Class E)
- Misdemeanor Death by Vehicle (Class 1 misdemeanor)
- Felony Serious Injury by Vehicle (Class F)
- Aggravated Felony Serious Injury by Vehicle (Class E)
- Aggravated Felony Death by Vehicle (Class D)
- Repeat Felony Death by Vehicle – Same sentence as second degree murder (Class B2)

BILL ANALYSIS: Senate Bill 158:

- repeals Aggravated Felony Serious Injury by Vehicle (Class E).
- repeals Aggravated Felony Death by Vehicle (Class D).
- increases the penalty for Felony Death by Vehicle from a Class E to a Class D felony.
- increases the penalty for Felony Serious Injury by vehicle from a Class F to a Class E felony.

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

S158-SMRW-108(CSRW-41) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 900
PROPOSED COMMITTEE SUBSTITUTE S900-CSST-39 [v.1]

5/12/2009 9:23:59 PM

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:	Senate Judiciary I	**Date:**	May 12, 2009
Introduced by:	Sen. Rouzer	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to First Edition S900-CSST-39		Committee Counsel

SUMMARY: Senate Bill 900 would

- ***Permit Registers of Deeds and Clerks of Court to remove personal identification information from their public Web sites without requests.***
- ***Require Registers of Deeds and Clerks of Court to, in good faith, remove social security and drivers license numbers from information on their public Web sites, effective July 1, 2011.***

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 personal identification information from their public Web sites without a request from a specific individual.

Section 2 requires 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 from their public Web sites beginning July 1, 2011. After this date, the current immunity from liability for Registers of Deeds and Clerks of Court will only apply if the optical character recognition technology is utilized.

EFFECTIVE DATE: Except as noted, when it becomes law.

S900-SMST-38(CSST-39) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 527

Short Title:	Amend Second Degree Rape & Sexual Offense.	(Public)
Sponsors:	Senator Boseman.	
Referred to:	Judiciary I.	

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIMINAL OFFENSES OF SECOND DEGREE RAPE AND SECOND DEGREE SEXUAL OFFENSE TO MAKE IT UNLAWFUL FOR A PERSON IN A POSITION OF AUTHORITY TO ENGAGE IN A SEX OFFENSE WITH A VICTIM WHO IS UNDULY INFLUENCED BY THE PERSON IN A POSITION OF AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-27.1 is amended by adding a new subdivision to read:

"(3a) Position of authority. – That position occupied by a parent, guardian, relative, household member, teacher, employer, custodian, or any other person who, by reason of his or her position, is able to exercise significant influence over a person."

SECTION 2. G.S. 14-27.3 reads as rewritten:

"**§ 14-27.3. Second-degree rape.**

(a) A person is guilty of rape in the second degree if the person engages in vaginal intercourse with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically ~~helpless.~~helpless; or

(3) Over whom the offending person is in a position of authority and the offending person uses this position of authority to influence the other person to submit to the act.

(b) Any person who commits the offense defined in this section is guilty of ~~a~~ a Class C ~~felony.~~felony, unless the conduct is covered under some other provision of law providing greater punishment.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child conceived during the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes.

(d) Consent is not a defense to a charge under subdivision (3) of subsection (a) of this section."

SECTION 3. G.S. 14-27.5 reads as rewritten:

"**§ 14-27.5. Second-degree sexual offense.**

(a) A person is guilty of a sexual offense in the second degree if the person engages in a sexual act with another person:

(1) By force and against the will of the other person; or

(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically ~~helpless.~~helpless; or

(3) Over whom the offending person is in a position of authority and the offending person uses this position of authority to influence the other person to submit to the act.

(b) Any person who commits the offense defined in this section is guilty of a Class C ~~felony.~~felony, unless the conduct is covered under some other provision of law providing greater punishment.

(c) Consent is not a defense to a charge under subdivision (3) of subsection (a) of this section."

SECTION 4. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 586

Short Title:	File Lis Pendens for Certain Erosion Actions.	(Public)
Sponsors:	Senators McKissick; Apodaca, Atwater, Brunstetter, Foriest, Forrester, Graham, Hartsell, Jones, and Stevens.	
Referred to:	Judiciary I.	

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE FILING OF NOTICE OF PENDING LITIGATION FOR ACTIONS SEEKING INJUNCTIVE RELIEF REGARDING SEDIMENTATION AND EROSION CONTROL FOR ANY LAND-DISTURBING ACTIVITY THAT IS SUBJECT TO THE REQUIREMENTS OF ARTICLE 4 OF CHAPTER 113A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-116(a) reads as rewritten:

"(a) Any person desiring the benefit of constructive notice of pending litigation must file a separate, independent notice thereof, which notice shall be cross-indexed in accordance with G.S. 1-117, in all of the following cases:

(1) Actions affecting title to real ~~property;~~property.

(2) Actions to foreclose any mortgage or deed of trust or to enforce any lien on real ~~property; and~~property.

(3) Actions in which any order of attachment is issued and real property is attached.

(4) Actions seeking injunctive relief under G.S. 113A-64.1 or G.S. 113A-65 regarding sedimentation and erosion control for any land-disturbing activity that is subject to the requirements of Article 4 of Chapter 113A of the General Statutes."

SECTION 2. This act becomes effective October 1, 2009, and applies to actions filed on or after that date.

Attachment 10

SENATE BILL 586:
File Lis Pendens for Certain Erosion Actions

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	April 20, 2009
Introduced by:	Sen. McKissick	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 586 would permit the filing of a notice of pending litigation for injunctive relief regarding certain sedimentation and erosion control actions.***

[As introduced, this bill was identical to H789, as introduced by Reps. Hall, Luebke, Michaux, Wilkins, which is currently in House Environment and Natural Resources, if favorable, Judiciary I.]

CURRENT LAW: A notice of lis pendens is a notice filed for the purpose of warning all persons that the title to certain property is in litigation, and serves as notice that a purchaser is in danger of being bound by an adverse judgment.

Currently, under North Carolina law, a notice of lis pendens may be filed in the following actions:

- Actions affecting title to real property.
- Actions to foreclose any mortgage or deed of trust or to enforce any lien on real property.
- Actions in which any order of attachment is issued and real property is attached.

The notice of lis pendens is to contain the name of the court in which the action has been commenced or is pending; the names of the parties to the action; the nature and purpose of the action; and a description of the property to be affected thereby. The notice may be filed at or any time after the commencement of an action; at or any time after real property has been attached; or at or any time after the filing of an answer or other pleading in which the pleading party states an affirmative claim for relief falling within the actions in which a notice of lis pendens may be filed.

The notice of lis pendens is to be filed with the clerk of superior court of each county in which any part of the real property is located in order to be effective against bona fide purchasers or lien creditors with respect to that real property. Every notice filed is to be cross-indexed in a record called the "Record of Lis Pendens." The notice of lis pendens is constructive notice to a purchaser or incumbrancer of the affected property and each are bound by the proceedings taken after the cross-indexing to the same extent as if the purchaser or incumbrancer were a party to the proceedings.

The notice of lis pendens is effective only if the notice of summons is served, and may be cancelled by the court in which the action was filed.

BILL ANALYSIS: Senate Bill 586 would also permit the filing of a notice of lis pendens for an action seeking injunctive relief under G.S. 113A-64.1(Restoration of areas affected by failure to comply) or G.S. 113A-65 (Injunctive relief) regarding sedimentation and erosion control for any land disturbing activity subject to Article 4 of Chapter 113A. 'Land disturbing activity' is defined as "any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation" for purposes of Article 4 of Chapter 113A.

EFFECTIVE DATE: Effective October 1, 2009, and applies to actions filed on or after that date.

S586-SMST-20(e1) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 586

Short Title:	File Lis Pendens for Certain Erosion Actions.	(Public)
Sponsors:	Senators McKissick; Apodaca, Atwater, Brunstetter, Foriest, Forrester, Graham, Hartsell, Jones, and Stevens.	
Referred to:	Judiciary I.	

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE FILING OF NOTICE OF PENDING LITIGATION FOR ACTIONS SEEKING INJUNCTIVE RELIEF REGARDING SEDIMENTATION AND EROSION CONTROL FOR ANY LAND-DISTURBING ACTIVITY THAT IS SUBJECT TO THE REQUIREMENTS OF ARTICLE 4 OF CHAPTER 113A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-116(a) reads as rewritten:

"(a) Any person desiring the benefit of constructive notice of pending litigation must file a separate, independent notice thereof, which notice shall be cross-indexed in accordance with G.S. 1-117, in all of the following cases:

(1) Actions affecting title to real ~~property;~~property.

(2) Actions to foreclose any mortgage or deed of trust or to enforce any lien on real ~~property; and~~property.

(3) Actions in which any order of attachment is issued and real property is attached.

(4) Actions seeking injunctive relief under G.S. 113A-64.1 or G.S. 113A-65 regarding sedimentation and erosion control for any land-disturbing activity that is subject to the requirements of Article 4 of Chapter 113A of the General Statutes."

SECTION 2. This act becomes effective October 1, 2009, and applies to actions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 488

Short Title:	Establish Proportionate Sentence Lengths.	(Public)
Sponsors:	Senators Kinnaird; Bingham, Nesbitt, and Snow.	
Referred to:	Judiciary I.	

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE THE INCREASE IN SENTENCE LENGTHS BETWEEN PRIOR RECORD LEVELS MORE PROPORTIONATE USING A SET PERCENTAGE INCREMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.17(c) reads as rewritten:

"(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. – The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

(1) A sentence disposition or dispositions: "C" indicates that a community punishment is authorized; "I" indicates that an intermediate punishment is authorized; "A" indicates that an active punishment is authorized; and "Life Imprisonment Without Parole" indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.

(2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.

(3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.

(4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

	I	II	III	IV	V	VI
	0 Pts	1-4 Pts	5-8 Pts	9-14 Pts	15-18 Pts	19+ Pts
A	Life Imprisonment Without Parole or Death as Established by Statute					

	A	A	A	A	A	A	DISPOSITION
	~~240-300~~	~~288-360~~	~~336-420~~	~~384-480~~	~~Life Imprisonment Without Parole~~		~~Aggravated~~
~~B1~~	~~192-240~~	~~230-288~~	~~269-336~~	~~307-384~~	~~346-433~~	~~384-480~~	~~PRESUMPTIVE~~
	~~144-192~~	~~173-230~~	~~202-269~~	~~230-307~~	~~260-346~~	~~288-384~~	~~Mitigated~~
	240-300	276-345	317-397	365-456	Life Imprisonment Without Parole		Aggravated
B1	192-240	221-276	254-317	292-365	336-420	386-483	PRESUMPTIVE
	144-192	166-221	190-254	219-292	252-336	290-386	Mitigated

	A	A	A	A	A	A	DISPOSITION
	~~157-196~~	~~189-237~~	~~220-276~~	~~251-313~~	~~282-353~~	~~313-392~~	~~Aggravated~~
~~B2~~	~~125-157~~	~~151-189~~	~~176-220~~	~~201-251~~	~~225-282~~	~~251-313~~	~~PRESUMPTIVE~~
	~~94-125~~	~~114-151~~	~~132-176~~	~~151-201~~	~~169-225~~	~~188-251~~	~~Mitigated~~
	157-196	180-225	207-258	238-297	273-342	314-393	Aggravated
B2	125-157	144-180	165-207	190-238	219-273	251-314	PRESUMPTIVE
	94-125	108-144	124-165	143-190	164-219	189-251	Mitigated

	A	A	A	A	A	A	DISPOSITION
	~~73-92~~	~~100-125~~	~~116-145~~	~~133-167~~	~~151-188~~	~~168-210~~	~~Aggravated~~
~~C~~	~~58-73~~	~~80-100~~	~~93-116~~	~~107-133~~	~~121-151~~	~~135-168~~	~~PRESUMPTIVE~~
	~~44-58~~	~~60-80~~	~~70-93~~	~~80-107~~	~~90-121~~	~~101-135~~	~~Mitigated~~
	73-92	83-104	96-120	110-138	127-159	146-182	Aggravated
C	58-73	67-83	77-96	88-110	101-127	117-146	PRESUMPTIVE
	44-58	50-67	58-77	66-88	76-101	87-117	Mitigated

	A	A	A	A	A	A	DISPOSITION
	~~64-80~~	~~77-95~~	~~103-129~~	~~117-146~~	~~133-167~~	~~146-183~~	~~Aggravated~~
~~D~~	~~51-64~~	~~61-77~~	~~82-103~~	~~94-117~~	~~107-133~~	~~117-146~~	~~PRESUMPTIVE~~
	~~38-51~~	~~46-61~~	~~61-82~~	~~71-94~~	~~80-107~~	~~88-117~~	~~Mitigated~~
	64-80	73-92	84-105	97-121	111-139	128-160	Aggravated
D	51-64	59-73	67-84	78-97	89-111	103-128	PRESUMPTIVE
	38-51	44-59	51-67	58-78	67-89	77-103	Mitigated

	I/A	I/A	A	A	A	A	DISPOSITION
	~~25-31~~	~~29-36~~	~~34-42~~	~~46-58~~	~~53-66~~	~~59-74~~	~~Aggravated~~
~~E~~	~~20-25~~	~~23-29~~	~~27-34~~	~~37-46~~	~~42-53~~	~~47-59~~	~~PRESUMPTIVE~~
	~~15-20~~	~~17-23~~	~~20-27~~	~~28-37~~	~~32-42~~	~~35-47~~	~~Mitigated~~
	25-31	29-36	33-41	38-48	44-55	50-63	Aggravated
E	20-25	23-29	26-33	30-38	35-44	40-50	PRESUMPTIVE
	15-20	17-23	20-26	23-30	26-35	30-40	Mitigated

	I/A	I/A	I/A	A	A	A	DISPOSITION
	~~16-20~~	~~19-24~~	~~21-26~~	~~25-31~~	~~34-42~~	~~39-49~~	~~Aggravated~~
~~F~~	~~13-16~~	~~15-19~~	~~17-21~~	~~20-25~~	~~27-34~~	~~31-39~~	~~PRESUMPTIVE~~
	~~10-13~~	~~11-15~~	~~13-17~~	~~15-20~~	~~20-27~~	~~23-31~~	~~Mitigated~~
	16-20	19-23	21-27	25-31	28-36	33-41	Aggravated
F	13-16	15-19	17-21	20-25	23-28	26-33	PRESUMPTIVE
	10-13	11-15	13-17	15-20	17-23	20-26	Mitigated

	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	~~13-16~~	~~15-19~~	~~16-20~~	~~20-25~~	~~21-26~~	~~29-36~~	~~Aggravated~~
~~G~~	~~10-13~~	~~12-15~~	~~13-16~~	~~16-20~~	~~17-21~~	~~23-29~~	~~PRESUMPTIVE~~
	~~8-10~~	~~9-12~~	~~10-13~~	~~12-16~~	~~13-17~~	~~17-23~~	~~Mitigated~~
	13-16	14-18	17-21	19-24	22-27	25-31	Aggravated
G	10-13	12-14	13-17	15-19	17-22	20-25	PRESUMPTIVE

	8-10	9-12	10-13	11-15	13-17	15-20	Mitigated
	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated"

SECTION 2. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 489

Short Title:	Even Out Prior Criminal Record Points.	(Public)
Sponsors:	Senators Kinnaird; Nesbitt and Snow.	
Referred to:	Judiciary I.	

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO RESTRUCTURE THE PRIOR RECORD LEVEL POINT RANGES IN ORDER TO EXPAND THE POINTS IN PRIOR RECORD LEVEL I AND TO EVEN OUT THE REMAINING RANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.14(c) reads as rewritten:

"(c) Prior Record Levels for Felony Sentencing. – The prior record levels for felony sentencing are:

(1) Level I – ~~0 points.~~Not more than 1 point.

(2) Level II – At least ~~1,~~2, but not more than ~~4 points.~~5 points.

(3) Level III – At least ~~5,~~6, but not more than ~~8 points.~~9 points.

(4) Level IV – At least ~~9,~~10, but not more than ~~14 points.~~13 points.

(5) Level V – At least ~~15,~~14, but not more than ~~18 points.~~17 points.

(6) Level VI – At least ~~19 points.~~18 points.

In determining the prior record level, the classification of a prior offense is the classification assigned to that offense at the time the offense for which the offender is being sentenced is committed."

SECTION 2. G.S. 15A-1340.17(c) reads as rewritten:

"(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. – The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

(1) A sentence disposition or dispositions: "C" indicates that a community punishment is authorized; "I" indicates that an intermediate punishment is authorized; "A" indicates that an active punishment is authorized; and "Life Imprisonment Without Parole" indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.

(2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.

(3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in

such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.

(4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

	I ~~0 Pts~~ 0-1 Pt	II ~~1-4 Pts~~ 2-5 Pts	III ~~5-8 Pts~~ 6-9 Pts	IV ~~9-14 Pts~~ 10-13 Pts	V ~~15-18 Pts~~ 14-17 Pts	VI ~~19+ Pts~~ 18+ Pts	
A	Life Imprisonment Without Parole or Death as Established by Statute						
	A	A	A	A	A	A	DISPOSITION
	240-300	288-360	336-420	384-480	Life Imprisonment Without Parole		Aggravated
B1	192-240	230-288	269-336	307-384	346-433	384-480	PRESUMPTIVE
	144-192	173-230	202-269	230-307	260-346	288-384	Mitigated
	A	A	A	A	A	A	DISPOSITION
	157-196	189-237	220-276	251-313	282-353	313-392	Aggravated
B2	125-157	151-189	176-220	201-251	225-282	251-313	PRESUMPTIVE
	94-125	114-151	132-176	151-201	169-225	188-251	Mitigated
	A	A	A	A	A	A	DISPOSITION
	73-92	100-125	116-145	133-167	151-188	168-210	Aggravated
C	58-73	80-100	93-116	107-133	121-151	135-168	PRESUMPTIVE
	44-58	60-80	70-93	80-107	90-121	101-135	Mitigated
	A	A	A	A	A	A	DISPOSITION
	64-80	77-95	103-129	117-146	133-167	146-183	Aggravated
D	51-64	61-77	82-103	94-117	107-133	117-146	PRESUMPTIVE
	38-51	46-61	61-82	71-94	80-107	88-117	Mitigated
	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	34-42	46-58	53-66	59-74	Aggravated
E	20-25	23-29	27-34	37-46	42-53	47-59	PRESUMPTIVE
	15-20	17-23	20-27	28-37	32-42	35-47	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated
	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated
	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE

3-4	3-4	4-5	4-6	5-7	6-8	Mitigated"

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 490

Short Title:	Adjust B1-E Felony Penalties.	(Public)
Sponsors:	Senators Kinnaird; Nesbitt and Snow.	
Referred to:	Judiciary I.	

March 10, 2009

A BILL TO BE ENTITLED

AN ACT TO REALLOCATE THREE MONTHS FROM THE MINIMUM SENTENCE OF CLASSES B1 THROUGH E TO THE MAXIMUM SENTENCE, AND TO INCREASE THE PERIOD OF POST-RELEASE SUPERVISION FROM NINE MONTHS TO TWELVE MONTHS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.17 reads as rewritten:

"**§ 15A-1340.17. Punishment limits for each class of offense and prior record level.**

(a) Offense Classification; Default Classifications. – The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a felony for which there is no classification, it is a Class I felony.

(b) Fines. – Any judgment that includes a sentence of imprisonment may also include a fine. If a community punishment is authorized, the judgment may consist of a fine only. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. Unless otherwise provided, the amount of the fine is in the discretion of the court.

(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described. – The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:

(1) A sentence disposition or dispositions: "C" indicates that a community punishment is authorized; "I" indicates that an intermediate punishment is authorized; "A" indicates that an active punishment is authorized; and "Life Imprisonment Without Parole" indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.

(2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.

(3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.

(4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified;

in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Life Imprisonment Without Parole or Death as Established by Statute						
	A	A	A	A	A	A	DISPOSITION
	~~240-300~~	~~288-360~~	~~336-420~~	~~384-480~~	~~Life Imprisonment Without Parole~~		~~Aggravated~~
~~B1~~	~~192-240~~	~~230-288~~	~~269-336~~	~~307-384~~	~~346-433~~	~~384-480~~	~~PRESUMPTIVE~~
	~~144-192~~	~~173-230~~	~~202-269~~	~~230-307~~	~~260-346~~	~~288-384~~	~~Mitigated~~
	237-297	285-357	333-417	381-477	Life Imprisonment Without Parole		Aggravated
B1	189-237	227-285	266-333	304-381	343-430	381-477	PRESUMPTIVE
	141-189	170-227	199-266	227-304	257-343	285-381	Mitigated
	A	A	A	A	A	A	DISPOSITION
	~~157-196~~	~~189-237~~	~~220-276~~	~~251-313~~	~~282-353~~	~~313-392~~	~~Aggravated~~
~~B2~~	~~125-157~~	~~151-189~~	~~176-220~~	~~201-251~~	~~225-282~~	~~251-313~~	~~PRESUMPTIVE~~
	~~94-125~~	~~114-151~~	~~132-176~~	~~151-201~~	~~169-225~~	~~188-251~~	~~Mitigated~~
	154-193	186-234	217-273	248-310	279-350	310-389	Aggravated
B2	122-154	148-186	173-217	198-248	222-279	248-310	PRESUMPTIVE
	91-122	111-148	129-173	148-198	166-222	185-248	Mitigated
	A	A	A	A	A	A	DISPOSITION
	~~73-92~~	~~100-125~~	~~116-145~~	~~133-167~~	~~151-188~~	~~168-210~~	~~Aggravated~~
~~C~~	~~58-73~~	~~80-100~~	~~93-116~~	~~107-133~~	~~121-151~~	~~135-168~~	~~PRESUMPTIVE~~
	~~44-58~~	~~60-80~~	~~70-93~~	~~80-107~~	~~90-121~~	~~101-135~~	~~Mitigated~~
	70-89	97-122	113-142	130-164	148-185	165-207	Aggravated
C	55-70	77-97	90-113	104-130	118-148	132-165	PRESUMPTIVE
	41-55	57-77	67-90	77-104	87-118	98-132	Mitigated
	A	A	A	A	A	A	DISPOSITION
	~~64-80~~	~~77-95~~	~~103-129~~	~~117-146~~	~~133-167~~	~~146-183~~	~~Aggravated~~
~~D~~	~~51-64~~	~~61-77~~	~~82-103~~	~~94-117~~	~~107-133~~	~~117-146~~	~~PRESUMPTIVE~~
	~~38-51~~	~~46-61~~	~~61-82~~	~~71-94~~	~~80-107~~	~~88-117~~	~~Mitigated~~
	61-77	74-92	100-126	114-143	130-164	143-180	Aggravated
D	48-61	58-74	79-100	91-114	104-130	114-143	PRESUMPTIVE
	35-48	43-58	58-79	68-91	77-104	85-114	Mitigated
	I/A	I/A	A	A	A	A	DISPOSITION
	~~25-31~~	~~29-36~~	~~34-42~~	~~46-58~~	~~53-66~~	~~59-74~~	~~Aggravated~~
~~E~~	~~20-25~~	~~23-29~~	~~27-34~~	~~37-46~~	~~42-53~~	~~47-59~~	~~PRESUMPTIVE~~
	~~15-20~~	~~17-23~~	~~20-27~~	~~28-37~~	~~32-42~~	~~35-47~~	~~Mitigated~~
	22-28	26-33	31-39	43-55	50-63	56-71	Aggravated
E	17-22	20-26	24-31	34-43	39-50	44-56	PRESUMPTIVE
	12-17	14-20	17-24	25-34	29-39	32-44	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-24	21-26	25-31	34-42	39-49	Aggravated
F	13-16	15-19	17-21	20-25	27-34	31-39	PRESUMPTIVE
	10-13	11-15	13-17	15-20	20-27	23-31	Mitigated

	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	15-19	16-20	20-25	21-26	29-36	Aggravated
G	10-13	12-15	13-16	16-20	17-21	23-29	PRESUMPTIVE
	8-10	9-12	10-13	12-16	13-17	17-23	Mitigated
	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
	C	C/I	I	I/A	I/A	I/A	DISPOSITION
	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
	3-4	3-4	4-5	4-6	5-7	6-8	Mitigated

(d) Maximum Sentences Specified for Class F through Class I Felonies. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class F through Class I felonies. The first figure in each cell in the table is the minimum term and the second is the maximum term.

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

(e) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms up to 339 Months. – Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class B1 through Class E felonies. The first figure in each cell of the table is the minimum term and the second is the maximum term.

~~15-27~~	~~16-29~~	~~17-30~~	~~18-31~~	~~19-32~~	~~20-33~~	~~21-35~~	~~22-36~~
~~23-37~~	~~24-38~~	~~25-39~~	~~26-41~~	~~27-42~~	~~28-43~~	~~29-44~~	~~30-45~~
~~31-47~~	~~32-48~~	~~33-49~~	~~34-50~~	~~35-51~~	~~36-53~~	~~37-54~~	~~38-55~~
~~39-56~~	~~40-57~~	~~41-59~~	~~42-60~~	~~43-61~~	~~44-62~~	~~45-63~~	~~46-65~~
~~47-66~~	~~48-67~~	~~49-68~~	~~50-69~~	~~51-71~~	~~52-72~~	~~53-73~~	~~54-74~~
~~55-75~~	~~56-77~~	~~57-78~~	~~58-79~~	~~59-80~~	~~60-81~~	~~61-83~~	~~62-84~~
~~63-85~~	~~64-86~~	~~65-87~~	~~66-89~~	~~67-90~~	~~68-91~~	~~69-92~~	~~70-93~~
~~71-95~~	~~72-96~~	~~73-97~~	~~74-98~~	~~75-99~~	~~76-101~~	~~77-102~~	~~78-103~~
~~79-104~~	~~80-105~~	~~81-107~~	~~82-108~~	~~83-109~~	~~84-110~~	~~85-111~~	~~86-113~~
~~87-114~~	~~88-115~~	~~89-116~~	~~90-117~~	~~91-119~~	~~92-120~~	~~93-121~~	~~94-122~~
~~95-123~~	~~96-125~~	~~97-126~~	~~98-127~~	~~99-128~~	~~100-129~~	~~101-131~~	~~102-132~~
~~103-133~~	~~104-134~~	~~105-135~~	~~106-137~~	~~107-138~~	~~108-139~~	~~109-140~~	~~110-141~~
~~111-143~~	~~112-144~~	~~113-145~~	~~114-146~~	~~115-147~~	~~116-149~~	~~117-150~~	~~118-151~~
~~119-152~~	~~120-153~~	~~121-155~~	~~122-156~~	~~123-157~~	~~124-158~~	~~125-159~~	~~126-161~~
~~127-162~~	~~128-163~~	~~129-164~~	~~130-165~~	~~131-167~~	~~132-168~~	~~133-169~~	~~134-170~~
~~135-171~~	~~136-173~~	~~137-174~~	~~138-175~~	~~139-176~~	~~140-177~~	~~141-179~~	~~142-180~~

1	~~143-181~~	~~144-182~~	~~145-183~~	~~146-185~~	~~147-186~~	~~148-187~~	~~149-188~~	~~150-189~~
2	~~151-191~~	~~152-192~~	~~153-193~~	~~154-194~~	~~155-195~~	~~156-197~~	~~157-198~~	~~158-199~~
3	~~159-200~~	~~160-201~~	~~161-203~~	~~162-204~~	~~163-205~~	~~164-206~~	~~165-207~~	~~166-209~~
4	~~167-210~~	~~168-211~~	~~169-212~~	~~170-213~~	~~171-215~~	~~172-216~~	~~173-217~~	~~174-218~~
5	~~175-219~~	~~176-221~~	~~177-222~~	~~178-223~~	~~179-224~~	~~180-225~~	~~181-227~~	~~182-228~~
6	~~183-229~~	~~184-230~~	~~185-231~~	~~186-233~~	~~187-234~~	~~188-235~~	~~189-236~~	~~190-237~~
7	~~191-239~~	~~192-240~~	~~193-241~~	~~194-242~~	~~195-243~~	~~196-245~~	~~197-246~~	~~198-247~~
8	~~199-248~~	~~200-249~~	~~201-251~~	~~202-252~~	~~203-253~~	~~204-254~~	~~205-255~~	~~206-257~~
9	~~207-258~~	~~208-259~~	~~209-260~~	~~210-261~~	~~211-263~~	~~212-264~~	~~213-265~~	~~214-266~~
10	~~215-267~~	~~216-269~~	~~217-270~~	~~218-271~~	~~219-272~~	~~220-273~~	~~221-275~~	~~222-276~~
11	~~223-277~~	~~224-278~~	~~225-279~~	~~226-281~~	~~227-282~~	~~228-283~~	~~229-284~~	~~230-285~~
12	~~231-287~~	~~232-288~~	~~233-289~~	~~234-290~~	~~235-291~~	~~236-293~~	~~237-294~~	~~238-295~~
13	~~239-296~~	~~240-297~~	~~241-299~~	~~242-300~~	~~243-301~~	~~244-302~~	~~245-303~~	~~246-305~~
14	~~247-306~~	~~248-307~~	~~249-308~~	~~250-309~~	~~251-311~~	~~252-312~~	~~253-313~~	~~254-314~~
15	~~255-315~~	~~256-317~~	~~257-318~~	~~258-319~~	~~259-320~~	~~260-321~~	~~261-323~~	~~262-324~~
16	~~263-325~~	~~264-326~~	~~265-327~~	~~266-329~~	~~267-330~~	~~268-331~~	~~269-332~~	~~270-333~~
17	~~271-335~~	~~272-336~~	~~273-337~~	~~274-338~~	~~275-339~~	~~276-341~~	~~277-342~~	~~278-343~~
18	~~279-344~~	~~280-345~~	~~281-347~~	~~282-348~~	~~283-349~~	~~284-350~~	~~285-351~~	~~286-353~~
19	~~287-354~~	~~288-355~~	~~289-356~~	~~290-357~~	~~291-359~~	~~292-360~~	~~293-361~~	~~294-362~~
20	~~295-363~~	~~296-365~~	~~297-366~~	~~298-367~~	~~299-368~~	~~300-369~~	~~301-371~~	~~302-372~~
21	~~303-373~~	~~304-374~~	~~305-375~~	~~306-377~~	~~307-378~~	~~308-379~~	~~309-380~~	~~310-381~~
22	~~311-383~~	~~312-384~~	~~313-385~~	~~314-386~~	~~315-387~~	~~316-389~~	~~317-390~~	~~318-391~~
23	~~319-392~~	~~320-393~~	~~321-395~~	~~322-396~~	~~323-397~~	~~324-398~~	~~325-399~~	~~326-401~~
24	~~327-402~~	~~328-403~~	~~329-404~~	~~330-405~~	~~331-407~~	~~332-408~~	~~333-409~~	~~334-410~~
25	~~335-411~~	~~336-413.~~	~~337-414~~	~~338-415~~	~~339-416~~			
26	12-27	13-28	14-29	15-30	16-32	17-33	18-34	19-35
27	20-36	21-38	22-39	23-40	24-41	25-42	26-44	27-45
28	28-46	29-47	30-48	31-50	32-51	33-52	34-53	35-54
29	36-56	37-57	38-58	39-59	40-60	41-62	42-63	43-64
30	44-65	45-66	46-68	47-69	48-70	49-71	50-72	51-74
31	52-75	53-76	54-77	55-78	56-80	57-81	58-82	59-83
32	60-84	61-86	62-87	63-88	64-89	65-90	66-92	67-93
33	68-94	69-95	70-96	71-98	72-99	73-100	74-101	75-102
34	76-104	77-105	78-106	79-107	80-108	81-110	82-111	83-112
35	84-113	85-114	86-116	87-117	88-118	89-119	90-120	91-122
36	92-123	93-124	94-125	95-126	96-128	97-129	98-130	99-131
37	100-132	101-134	102-135	103-136	104-137	105-138	106-140	107-141
38	108-142	109-143	110-144	111-146	112-147	113-148	114-149	115-150
39	116-152	117-153	118-154	119-155	120-156	121-158	122-159	123-160
40	124-161	125-162	126-164	127-165	128-166	129-167	130-168	131-170
41	132-171	133-172	134-173	135-175	136-176	137-177	138-178	139-179
42	140-180	141-182	142-183	143-184	144-185	145-186	146-188	147-189
43	148-190	149-191	150-192	151-194	152-195	153-196	154-197	155-198
44	156-200	157-201	158-202	159-203	160-204	161-206	162-207	163-208
45	164-209	165-210	166-212	167-213	168-214	169-215	170-216	171-218
46	172-219	173-220	174-221	175-222	176-224	177-225	178-226	179-227
47	180-228	181-230	182-231	183-232	184-233	185-234	186-236	187-237
48	188-238	189-239	190-240	191-242	192-243	193-244	194-245	195-246
49	196-248	197-249	198-250	199-251	200-252	201-254	202-255	203-256
50	204-257	205-258	206-260	207-261	208-262	209-263	210-264	211-266
51	212-267	213-268	214-269	215-270	216-272	217-273	218-274	219-275

220-276	221-278	222-279	223-280	224-281	225-282	226-284	227-285
228-286	229-287	230-288	231-290	232-291	233-292	234-293	235-294
236-296	237-297	238-298	239-299	240-300	241-302	242-303	243-304
244-305	245-306	246-308	247-309	248-310	249-311	250-312	251-314
252-315	253-316	254-317	255-318	256-320	257-321	258-322	259-323
260-324	261-326	262-327	263-328	264-329	265-330	266-332	267-333
268-334	269-335	270-336	271-338	272-339	273-340	274-341	275-342
276-344	277-345	278-346	279-347	280-348	281-350	282-351	283-352
284-353	285-354	286-356	287-357	288-358	289-359	290-360	291-362
292-363	293-364	294-365	295-366	296-368	297-369	298-370	299-371
300-372	301-374	302-375	303-376	304-377	305-378	306-380	307-381
308-382	309-383	310-384	311-386	312-387	313-388	314-389	315-390
316-392	317-393	318-394	319-395	320-396	321-398	322-399	323-400
324-401	325-402	326-404	327-405	328-406	329-407	330-408	331-410
332-411	333-412	334-413	335-414	336-416	337-417	338-418	339-419

(e1) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms of 340 Months or More. – Unless provided otherwise in a statute establishing a punishment for a specific crime, when the minimum sentence is 340 months or more, the corresponding maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to the next highest month, plus ~~nine~~ 12 additional months."

SECTION 2. G.S. 15A-1368(a)(5) reads as rewritten:

"(5) Maximum imposed term. – The maximum term of imprisonment imposed on an individual prisoner by a court judgment, as described in G.S. 15A-1340.13(c). When a prisoner is serving consecutive prison terms, the maximum imposed term, for purposes of this Article, is the sum of all maximum terms imposed in the court judgment or judgments, less ~~nine~~ 12 months for each of the second and subsequent sentences imposed for Class B through Class E felonies."

SECTION 3. G.S. 15A-1368.2 reads as rewritten:

"**§ 15A-1368.2. Post-release supervision eligibility and procedure.**

(a) A prisoner to whom this Article applies shall be released from prison for post-release supervision on the date equivalent to his maximum imposed prison term less nine months, less any earned time awarded by the Department of Correction or the custodian of a local confinement facility under G.S. 15A-1340.13(d). If a prisoner has not been awarded any earned time, the prisoner shall be released for post-release supervision on the date equivalent to his maximum prison term less ~~nine~~ 12 months.

(b) A prisoner shall not refuse post-release supervision.

(c) A supervisee's period of post-release supervision shall be for a period of ~~nine~~ 12 months, unless the offense is an offense for which registration is required pursuant to Article 27A of Chapter 14 of the General Statutes. For offenses subject to the registration requirement of Article 27A of Chapter 14 of the General Statutes, the period of post-release supervision is five years. The conditions of post-release supervision are as authorized in G.S. 15A-1368.5.

(c1) Notwithstanding subsection (c) of this section, a person required to submit to satellite-based monitoring pursuant to G.S. 15A-1368.4(b1)(6) shall continue to participate in satellite-based monitoring beyond the period of post-release supervision until the Commission releases the person from that requirement pursuant to G.S. 14-208.43.

(d) A supervisee's period of post-release supervision may be reduced while the supervisee is under supervision by earned time awarded by the Department of Correction, pursuant to rules adopted in accordance with law. A supervisee is eligible to receive earned

time credit toward the period of supervision for compliance with reintegrative conditions described in G.S. 15A-1368.5.

(e) Repealed by Session Laws 1997-237, s. 7.

(f) When a supervisee completes the period of post-release supervision, the sentence or sentences from which the supervisee was placed on post-release supervision are terminated."

SECTION 4. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
Legislative Services Office
George R. Hall, Legislative Services Officer

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Marilyn Chism, Director

MEMORANDUM

To Senate Judiciary I Committee

From Douglas R. Holbrook

Subj: Senate Bills 488, 489, and 490

Date May 13, 2009

Senate Bills 488, 489, and 490 implement changes to the Structured Sentencing grid originally enacted in 1993. The Sentencing Commission developed these policy options in 2001 in response to a legislative request for alternatives to reduce prison populations. Each of these bills produces projected bed savings in the five-year time frame; the impact of each is detailed below.

Senate Bill 488

Senate Bill 488 ("proportionality") changes the minimum sentence ranges in each of the cells of the sentencing grid. The minimum sentence range at each prior record level is increased by a fixed 15% over the lower level. The current grid's increases from one level to the next are essentially random. Classes H and I, the lowest level felonies and the most commonly charged offenses, are not changed by this bill. The bill does not affect the likelihood of any offender going to prison in any given cell of the grid, but does generally provide for shorter minimum sentences for the judge to select.

Year	2010-11	2011-12	2012-13	2013-14	2014-15
Bed Impact	14	66	12	-62	-224

Senate Bill 489

Senate Bill 489 changes the structure of the grid. Currently, Prior Record Level 1 means that an offender has no prior convictions of any crime other than a Class 2 or 3 misdemeanor. This bill would allow offenders with one prior Class A1 or 1 misdemeanor to remain at Prior Record Level 1 for sentencing purposes, and would redistribute the prior record points across the remainder of the grid at increments of four points each. This bill changes the probability of an active sentence at the lower levels of the grid.

Year	2010-11	2011-12	2012-13	2013-14	2014-15
Bed Impact	-256	-328	-373	-423	-485

Senate Bill 490

Senate Bill 490 lowers the minimum sentences for Class B1 through E felonies by three months and increases the maximum sentence by three months and requires a full year of

post-release supervision, instead of the current nine-month period. This has the effect of instituting a longer period of re-incarceration if the offender fails on supervision and is revoked. Assuming the same percentage of time served over the minimum as is current practice, offenders would become eligible for release earlier.

Year	2010-11	2011-12	2012-13	2013-14	2014-15
Bed Impact	43	-76	-182	-258	-325

Each of these bills affects the grid in different ways, and these estimates of bed savings do not take into account any interaction effects if all three were implemented.

SENATE JUDICIARY I COMMITTEE
(Civil)

May 28, 2009
10:00 a.m. – Room 1027

The Senate Judiciary I Committee met Thursday, May 28, 2009, in Room 1027 of the Legislative Building. Chairman Martin Nesbitt declared a quorum present and introduced the pages serving the committee meeting.

Chairman Nesbitt recognized Representative Rapp to explain H.B. 1171 – Law Student Externs at General Assembly. Representative Rapp explained the bill assisted by Staff Counsel Erika Churchill. Erika said this bill is a Proposed Committee Substitute for H.B. 1171 and Senator Clodfelter made the motion for it be adopted for discussion. After questions and discussion Senator Clodfelter made the motion to give the original bill an unfavorable report and favorable to the Proposed Committee Substitute for H.B. 1171 and it passed unanimously.

Chairman Nesbitt recognized Representative Avila to explain H.B. 1198 – Clarification/Hearing on License Restoration. Representative Avila explained the bill assisted by Staff Counsel Erika Churchill and after questions and discussion Senator McKissick made the motion to give the bill a favorable report and it passed unanimously.

Chairman Nesbitt recognized Representative Goodwin to explain H.B. 1398 – Determining Senior Resident Superior Court Judge. Representative Goodwin explained the bill and after questions and discussion Senator Stein made the motion to give the bill a favorable report. Seven of the committee members voting in favor and five voting against H.B. 13 98 it passed with a favorable report. Senator Stein will handle H.B. 1398 on the floor of the Senate.

Representative Martin was recognized to explain H.B. 1312 – Omnibus Highway/MV Statute Changes. Representative Martin said this is a Proposed Committee Substitute for H.B. 1312 and Senator Hoyle made the motion to adopt the PCS for H.B. 1312 for discussion. Representative Martin explained that the PCS for 1312 is known as the Transportation's technical corrections bill and was assisted in explanation by Staff Counsel Giles Perry. Others that assisted with questions and discussion were; Mark Foster, Chief Financial Officer with DOT, Joanna Reese with DOT, and Calvin Leggett with DOT. After extensive questions and discussion the committee decided to displace H.B. 1312 Proposed Committee Substitute until some kinks can be worked out.

The meeting was adjourned at 11:00 a.m.

Copies of H.B. 1171, PCS for H.B. 1171, Bill Analysis for H.B. 1171, H.B. 1198, Bill Analysis for H.B. 1198, H.B. 1398, PSCS for H.B 1398, Bill Analysis for H.B. 1398, PCS for H.B. 1312, PSCS for H.B. 1312, Bill Analysis for H.B. 1312 are attached to these minutes as Attachments 1,2,3,4,5,6,7,8,9,10,

Respectfully Submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W. Lee

Janette W. Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 1171

Short Title:	Law Student Externs at General Assembly.	(Public)
Sponsors:	Representatives Glazier, Tarleton, Harrison, Rapp (Primary Sponsors); Faison, Lucas, and Mackey.	
Referred to:	State Government/State Personnel, if favorable, Judiciary II.	

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT LAW STUDENT EXTERNS AT THE GENERAL ASSEMBLY ARE SUBJECT TO LEGISLATIVE CONFIDENTIALITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-29(2) reads as rewritten:

"**§ 120-129. Definitions.**

As used in this Article:

...

(2) "Legislative employee" means employees and officers of the General Assembly, consultants and counsel to members and committees of either house of the General Assembly or of legislative commissions who are paid by State funds, students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Services Commission, and employees of the School of Government at the University of North Carolina at Chapel Hill; but does not mean legislators and members of the Council of State.

...."

SECTION 2. G.S. 120-134 reads as rewritten:

"**§ 120-134. Penalty.**

Violation of any provision of this Article shall be grounds for disciplinary action in the case of ~~employees~~ employees, for referral to the academic institution for appropriate discipline in the case of law student externs, and for removal from office in the case of public officers. No criminal penalty shall attach for any violation of this Article."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1171
PROPOSED SENATE COMMITTEE SUBSTITUTE H1171-CSST-43 [v.1]

5/27/2009 9:15:13 PM

Short Title: Law Student Externs at General Assembly. (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT LAW STUDENT EXTERNS AT THE GENERAL ASSEMBLY ARE SUBJECT TO LEGISLATIVE CONFIDENTIALITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-29(2) reads as rewritten:

"(2) "Legislative employee" means employees and officers of the General Assembly, consultants and counsel to members and committees of either house of the General Assembly or of legislative commissions who are paid by State funds, students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Services Commission, and employees of the School of Government at the University of North Carolina at Chapel Hill; but does not mean legislators and members of the Council of State."

SECTION 2. G.S. 120-134 reads as rewritten:

"**§ 120-134. Penalty.**

Violation of any provision of this Article shall be grounds for disciplinary action in the case of ~~employees~~ employees, for referral to the academic institution for appropriate discipline in the case of law student externs, and for removal from office in the case of public officers. No criminal penalty shall attach for any violation of this Article."

SECTION 3. G.S. 120C-100(a)(6) reads as rewritten:

"(6) Legislative employee. – Employees and officers of the General Assembly, consultants and counsel to committees of either house of the General Assembly or of legislative commissions, who are paid by State funds, and students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Services Commission, but not including legislators, members of the Council of State, nonsupervisory employees of the Administrative Division's Facility Maintenance and Food Services staff, or pages."

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

HOUSE BILL 1171:
Law Student Externs at General Assembly

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 27, 2009
Introduced by:	Reps. Glazier, Tarleton, Harrison, Rapp	**Prepared by:**	R. Erika Churchill Committee Counsel
Analysis of:	PCS to First Edition H1171-CSST-43		

SUMMARY: ***House Bill 1171 amends Article 17 of Chapter 120, to extend the provisions pertaining to confidentiality of legislative communications and the State Government Ethics Act to law students serving in an externship capacity.***

CURRENT LAW & BILL ANALYSIS:

Chapter 120, Article 17, of the General Statutes pertains to the Confidentiality of Legislative Communications.

Section 1 of amends the definition of "legislative employee" contained in G.S. 120-129, to include students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Services Commission. The result of this change is that the externship participants would be treated as legislative employees with regard to the confidentiality provisions contained in rticle 17.

Section 2 of the bill contains a conforming amendment to G.S. 120-134 to provide that violation of any provision in Article 17 is grounds for referral to the academic institution for appropriate discipline in the case of law student externs.

Section 3 would amend the definition of "legislative employee" found in Chapter 120C, Lobbying Law, which in turn amends the definition of legislative employee found in Chapter 138A, State Government Ethics Act, to include students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Services Commission. The result of this change is that the externship participants would be subject to the gift ban, conflict of interest provisions, and all other ethical standards contained in the State Government Ethics Act that apply to legislative employees.

EFFECTIVE DATE: Effective when it becomes law.

H1171-SMST-43(CSST-43) v1

**Theresa Matula and Drupti Chauhan contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

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:	Senate Judiciary I	**Date:**	May 27, 2009
Introduced by:	Reps. Avila, Glazier	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 1198 would 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.

BILL ANALYSIS:

House Bill 1198 would amend the effective date of S.L. 2007-493 to provide that Section 14 of that act applies to a 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 20-9(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.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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:	Senate Judiciary I	**Date:**	May 27, 2009
Introduced by:	Rep. Goodwin	**Prepared by:**	R. Erika Churchill
Analysis of:	First Edition		Committee Counsel

SUMMARY: House Bill 1398 provides amends the statute that controls the determination of senior resident superior court judges to authorize the Chief Justice of the Supreme Court to designate one of the judges as senior resident superior court judge to serve at the pleasure of the Chief Justice in any district or set of districts with two or more regular resident superior court judges.

CURRENT LAW: Under the existing law, if there is one resident superior court judge for the district, that judge is the senior resident superior court judge.

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.

BILL ANALYSIS: The bill would grant the Chief Justice the authority to designate the senior resident superior court judge if there are two or more regular resident superior court judges for the district or set of districts.

EFFECTIVE DATE: 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.

BACKGROUND: Senior resident superior court judges and regular resident superior court judges possess equal jurisdiction, power, authority and status except for Constitutional and statutory duties placed on the senior resident judge, including appointment of the clerk and magistrates, removal of clerks and district attorneys, calendaring of cases, initiating and oversight of arbitration and mediated settlement conferences, and appointment of court reporters.

H1398-SMST-40(e1) v1

Tim Hovis contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1312
Committee Substitute Favorable 5/11/09

Short Title: Omnibus Highway/MV Statute Changes. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE APPLICABILITY OF THE LAW REQUIRING DRIVERS TO PULL OVER AND STOP WHEN APPROACHED BY A FIRE OR RESCUE VEHICLE, TO CLARIFY THAT PUBLIC SERVICE VEHICLES ARE COVERED UNDER THE MOVE OVER LAW, TO MODIFY THE CURRENT PROHIBITION ON PARKING ON HIGHWAYS OR HIGHWAY SHOULDERS, TO CHANGE THE TIME PERIOD IN WHICH THE DIVISION OF MOTOR VEHICLES MUST HOLD AN ADMINISTRATIVE HEARING FOR A VIOLATION OF THE MOTOR VEHICLE INSPECTION PROGRAM STATUTES BY AN EMISSIONS INSPECTION STATION LICENSE HOLDER, TO CLARIFY RESTRICTIONS ON OPERATING A SCHOOL BUS OR ACTIVITY BUS WHILE OCCUPIED BY A CHILD OR CHILDREN, TO EXEMPT DISTRIBUTIONS OF PROCEEDS DERIVED FROM GARVEE BONDS FROM THE STATE EQUITY DISTRIBUTION FORMULA FOR TRANSPORTATION FUNDS, AND TO SPECIFY THAT THE YELLOW LIGHT DURATION INTERVAL FOR A TRAFFIC CONTROL PHOTOGRAPHIC SYSTEM BE SPECIFIED IN A TRAFFIC SIGNAL PLAN SIGNED AND SEALED BY A PROFESSIONAL ENGINEER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-157(a) reads as rewritten:

"(a) Upon the approach of any law enforcement or fire department vehicle or public or private ambulance or rescue squad emergency service vehicle giving warning signal by appropriate light and by audible bell, siren or exhaust whistle, audible under normal conditions from a distance not less than 1000 feet, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb, clear of any intersection of streets or highways, and shall stop and remain in such position unless otherwise directed by a law enforcement or traffic officer until law enforcement or fire department vehicle or public or private ambulance or rescue squad emergency service vehicle shall have passed. Provided, however, this subsection shall not apply to vehicles traveling in the opposite direction of the vehicles herein enumerated when traveling on a ~~four-lane limited access~~ highway with a median divider dividing the highway for vehicles traveling in opposite directions, and provided further that the violation of this subsection shall be negligence per se. Violation of this subsection is a Class 2 misdemeanor."

SECTION 2. G.S. 20-157(f) reads as rewritten:

"(f) When an authorized emergency vehicle as described in subsection (a) of this section or any public service vehicle is parked or standing within 12 feet of a roadway and is giving a warning signal by appropriate light, the driver of every other approaching vehicle shall, as soon

as it is safe and when not otherwise directed by an individual lawfully directing traffic, do one of the following:

(1) Move the vehicle into a lane that is not the lane nearest the parked or standing authorized emergency vehicle or public service vehicle and continue traveling in that lane until safely clear of the authorized emergency ~~vehicle.~~vehicle or public service vehicle. This paragraph applies only if the roadway has at least two lanes for traffic proceeding in the direction of the approaching vehicle and if the approaching vehicle may change lanes safely and without interfering with any vehicular traffic.

(2) Slow the vehicle, maintaining a safe speed for traffic conditions, and operate the vehicle at a reduced speed and be prepared to stop until completely past the authorized emergency vehicle or public service vehicle. This paragraph applies only if the roadway has only one lane for traffic proceeding in the direction of the approaching vehicle or if the approaching vehicle may not change lanes safely and without interfering with any vehicular traffic.

For purposes of this section, "public service vehicle" means a vehicle that is being used to assist motorists or law enforcement officers with wrecked or disabled vehicles, and is operating an amber-colored flashing light authorized by G.S. 20-130.2. Violation of this subsection shall be negligence per se."

SECTION 3. G.S. 20-161(a) reads as rewritten:

"(a) No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled portion of any highway or highway bridge ~~outside municipal corporate limits~~on the State highway system unless the vehicle is disabled to such an extent that it is impossible to avoid stopping and temporarily leaving the vehicle upon the paved or main traveled portion of the highway or highway bridge."

SECTION 4. G.S. 20-161(b) reads as rewritten:

"(b) No person shall park or leave standing any vehicle upon the shoulder of a public highway ~~outside municipal corporate limits~~on the State highway system unless the vehicle can be clearly seen by approaching drivers from a distance of 200 feet in both directions and does not obstruct the normal movement of traffic."

SECTION 5. G.S. 20-183.8G(b) reads as rewritten:

"(b) Hearing After Statement of Charges. – When a license holder receives a statement of charges of a violation that could result in the suspension or revocation of the person's license, the person can obtain a hearing by making a request for a hearing. The person must make the request to the Division within 10 days after receiving the statement of the charges. A person who does not request a hearing within this time limit waives the right to a hearing.

The Division must hold a hearing requested under this subsection within ~~three business~~15 business days after receiving the ~~request unless the person requesting the hearing asks for additional time to prepare for the hearing.~~request. ~~A person may ask for no more than seven additional business days to prepare. If the additional time requested is within this limit, the Division must grant a person the additional time requested.~~ The hearing must be held at the location designated by the Division. Suspension or revocation of the license is stayed until a decision is made following the hearing.

If a person does not request a hearing within the time allowed for making the request, the proposed suspension or revocation becomes effective the day after the time for making the request ends. If a person requests a hearing but does not attend the hearing, the proposed suspension or revocation becomes effective the day after the date set for the hearing."

SECTION 6. G.S. 20-218 reads as rewritten:

"**§ 20-218. Standard qualifications for school bus drivers; speed limit for school buses and school activity buses.**

(a) Qualifications. – No person shall drive a school bus over the highways or public vehicular areas of North Carolina while it is occupied by ~~children~~ one or more child passengers unless the person furnishes to the superintendent of the schools of the county in which the bus shall be operated a certificate from any representative duly designated by the Commissioner and from the Director of Transportation or a designee of the Director in charge of school buses in the county showing that the person has been examined by them and is fit and competent to drive a school bus over the highways and public vehicular areas of the State. The driver of a school bus must be at least 18 years of age and hold a Class A, B, or C commercial drivers license and a school bus driver's certificate. The driver of a school activity bus must meet the same qualifications as a school bus driver or must have a license appropriate for the class of vehicle being driven.

(b) Speed Limits. – It is unlawful to drive a school bus ~~loaded with children~~ occupied by one or more child passengers over the highways or public vehicular areas of the State at a greater rate of speed than 45 miles per hour. It is unlawful to drive a school activity bus ~~loaded with children~~ loaded with one or more child passengers over the highways or public vehicular areas of North Carolina at a greater rate of speed than 55 miles per hour.

(c) Punishment. – A person who violates this section commits a Class 3 misdemeanor."

SECTION 7. G.S. 136-17.2A(i) is repealed.

SECTION 8. G.S. 160A-300.1(c1) reads as rewritten:

"(c1) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified ~~in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~ on the traffic signal plan of record signed and sealed by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes, and shall comply with the provisions of the Manual on Uniform Traffic Control Devices."

SECTION 9. G.S. 160A-300.2(e), as enacted by Section 3 of S.L. 2001-286, reads as rewritten:

"(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified ~~in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~ on the traffic signal plan of record signed and sealed by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes, and shall comply with the provisions of the Manual on Uniform Traffic Control Devices."

SECTION 10. G.S. 160A-300.3(e), as enacted by Section 4 of S.L. 2001-286, reads as rewritten:

"(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified ~~in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~ on the traffic signal plan of record signed and sealed by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes, and shall comply with the provisions of the Manual on Uniform Traffic Control Devices."

SECTION 11. G.S. 160A-303(b1)(4) reads as rewritten:

"(4) Is left on any public street or highway for longer than seven ~~days.~~days or is determined by law enforcement to be a hazard to the motoring public."

SECTION 12. Sections 1, 2, 3, 4, and 6 of this act become effective December 1, 2009, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1312
Committee Substitute Favorable 5/11/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1312-CSRW-47 [v.2]

5/27/2009 3:09:11 PM

Short Title: Omnibus Highway/MV Statute Changes. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE APPLICABILITY OF THE LAW REQUIRING DRIVERS TO PULL OVER AND STOP WHEN APPROACHED BY A FIRE OR RESCUE VEHICLE, TO CLARIFY THAT PUBLIC SERVICE VEHICLES ARE COVERED UNDER THE MOVE OVER LAW, TO MODIFY THE CURRENT PROHIBITION ON PARKING ON HIGHWAYS OR HIGHWAY SHOULDERS, TO CHANGE THE TIME PERIOD IN WHICH THE DIVISION OF MOTOR VEHICLES MUST HOLD AN ADMINISTRATIVE HEARING FOR A VIOLATION OF THE MOTOR VEHICLE INSPECTION PROGRAM STATUTES BY AN EMISSIONS INSPECTION STATION LICENSE HOLDER, TO CLARIFY RESTRICTIONS ON OPERATING A SCHOOL BUS OR ACTIVITY BUS WHILE OCCUPIED BY A CHILD OR CHILDREN, TO EXEMPT FUNDS RECEIVED FROM THE APPALACHIAN REGIONAL COMMISSION FOR THE APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM ROADS FROM THE STATE EQUITY DISTRIBUTION FORMULA FOR TRANSPORTATION FUNDS, TO EXEMPT DISTRIBUTIONS OF PROCEEDS DERIVED FROM GARVEE BONDS FROM THE STATE EQUITY DISTRIBUTION FORMULA FOR TRANSPORTATION FUNDS, TO REQUIRE THE DEPARTMENT OF TRANSPORTATION TO USE ALL FUNDS RECEIVED FROM THE APPALACHIAN REGIONAL COMMISSION FOR THE APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM TO COMPLETE CONSTRUCTION OF THE APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM ROADS; AND TO SPECIFY THAT THE YELLOW LIGHT DURATION INTERVAL FOR A TRAFFIC CONTROL PHOTOGRAPHIC SYSTEM BE SPECIFIED IN A TRAFFIC SIGNAL PLAN SIGNED AND SEALED BY A PROFESSIONAL ENGINEER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-157(a) reads as rewritten:

"(a) Upon the approach of any law enforcement or fire department vehicle or public or private ambulance or rescue squad emergency service vehicle giving warning signal by appropriate light and by audible bell, siren or exhaust whistle, audible under normal conditions from a distance not less than 1000 feet, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb, clear of any intersection of streets or highways, and shall stop and remain in such position unless otherwise directed by a law enforcement or traffic officer until law enforcement or fire

department vehicle or public or private ambulance or rescue squad emergency service vehicle shall have passed. Provided, however, this subsection shall not apply to vehicles traveling in the opposite direction of the vehicles herein enumerated when traveling on a ~~four-lane limited access~~ highway with a median divider dividing the highway for vehicles traveling in opposite directions, and provided further that the violation of this subsection shall be negligence per se. Violation of this subsection is a Class 2 misdemeanor."

SECTION 2. G.S. 20-157(f) reads as rewritten:

"(f) When an authorized emergency vehicle as described in subsection (a) of this section or any public service vehicle is parked or standing within 12 feet of a roadway and is giving a warning signal by appropriate light, the driver of every other approaching vehicle shall, as soon as it is safe and when not otherwise directed by an individual lawfully directing traffic, do one of the following:

(1) Move the vehicle into a lane that is not the lane nearest the parked or standing authorized emergency vehicle or public service vehicle and continue traveling in that lane until safely clear of the authorized emergency ~~vehicle.~~vehicle or public service vehicle. This paragraph applies only if the roadway has at least two lanes for traffic proceeding in the direction of the approaching vehicle and if the approaching vehicle may change lanes safely and without interfering with any vehicular traffic.

(2) Slow the vehicle, maintaining a safe speed for traffic conditions, and operate the vehicle at a reduced speed and be prepared to stop until completely past the authorized emergency vehicle or public service vehicle. This paragraph applies only if the roadway has only one lane for traffic proceeding in the direction of the approaching vehicle or if the approaching vehicle may not change lanes safely and without interfering with any vehicular traffic.

For purposes of this section, "public service vehicle" means a vehicle that is being used to assist motorists or law enforcement officers with wrecked or disabled vehicles, and is operating an amber-colored flashing light authorized by G.S. 20-130.2. Violation of this subsection shall be negligence per se."

SECTION 3. G.S. 20-161(a) reads as rewritten:

"(a) No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled portion of any highway or highway bridge ~~outside municipal corporate limits~~on the State highway system unless the vehicle is disabled to such an extent that it is impossible to avoid stopping and temporarily leaving the vehicle upon the paved or main traveled portion of the highway or highway bridge."

SECTION 4. G.S. 20-161(b) reads as rewritten:

"(b) No person shall park or leave standing any vehicle upon the shoulder of a public highway ~~outside municipal corporate limits~~on the State highway system unless the vehicle can be clearly seen by approaching drivers from a distance of 200 feet in both directions and does not obstruct the normal movement of traffic."

SECTION 5. G.S. 20-183.8G(b) reads as rewritten:

"(b) Hearing After Statement of Charges. – When a license holder receives a statement of charges of a violation that could result in the suspension or revocation of the person's license, the person can obtain a hearing by making a request for a hearing. The person must make the request to the Division within 10 days after receiving the statement of the charges. A person who does not request a hearing within this time limit waives the right to a hearing.

The Division must hold a hearing requested under this subsection within ~~three business~~15 business days after receiving the ~~request unless the person requesting the hearing asks for additional time to prepare for the hearing.~~request. ~~A person may ask for no more than seven additional business days to prepare. If the additional time requested is within this limit, the Division must grant a person the additional time requested.~~ The hearing must be held at the

location designated by the Division. Suspension or revocation of the license is stayed until a decision is made following the hearing.

If a person does not request a hearing within the time allowed for making the request, the proposed suspension or revocation becomes effective the day after the time for making the request ends. If a person requests a hearing but does not attend the hearing, the proposed suspension or revocation becomes effective the day after the date set for the hearing."

SECTION 6. G.S. 20-218 reads as rewritten:

"**§ 20-218. Standard qualifications for school bus drivers; speed limit for school buses and school activity buses.**

(a) Qualifications. – No person shall drive a school bus over the highways or public vehicular areas of North Carolina while it is occupied by ~~children~~ one or more child passengers unless the person furnishes to the superintendent of the schools of the county in which the bus shall be operated a certificate from any representative duly designated by the Commissioner and from the Director of Transportation or a designee of the Director in charge of school buses in the county showing that the person has been examined by them and is fit and competent to drive a school bus over the highways and public vehicular areas of the State. The driver of a school bus must be at least 18 years of age and hold a Class A, B, or C commercial drivers license and a school bus driver's certificate. The driver of a school activity bus must meet the same qualifications as a school bus driver or must have a license appropriate for the class of vehicle being driven.

(b) Speed Limits. – It is unlawful to drive a school bus ~~loaded with children~~ occupied by one or more child passengers over the highways or public vehicular areas of the State at a greater rate of speed than 45 miles per hour. It is unlawful to drive a school activity bus ~~loaded with children~~ loaded with one or more child passengers over the highways or public vehicular areas of North Carolina at a greater rate of speed than 55 miles per hour.

(c) Punishment. – A person who violates this section commits a Class 3 misdemeanor."

SECTION 7. G.S. 136-17.2A(a) reads as rewritten:

"(a) Funds expended for the Intrastate System projects listed in G.S. 136-179 and both State and federal-aid funds expended under the Transportation Improvement Program, other than federal congestion mitigation and air quality improvement program funds appropriated to the State by the United States pursuant to 23 U.S.C. § 104(b)(2) and 23 U.S.C. § 149, funds expended on an urban loop project listed in ~~G.S. 136-180~~ G.S. 136-180, funds from the Appalachian Regional Commission for the Appalachian Development Highway System, and funds received through competitive awards or discretionary grants through federal appropriations either for local governments, transportation authorities, transit authorities, or the Department, shall be distributed throughout the State in accordance with this section.

(1) Distribution Region A consists of the following counties: Bertie, Camden, Chowan, Currituck, Dare, Edgecombe, Gates, Halifax, Hertford, Hyde, Johnston, Martin, Nash, Northampton, Pasquotank, Perquimans, Tyrrell, Washington, Wayne, and Wilson.

(2) Distribution Region B consists of the following counties: Beaufort, Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Pitt, and Sampson.

(3) Distribution Region C consists of the following counties: Bladen, Columbus, Cumberland, Durham, Franklin, Granville, Harnett, Person, Robeson, Vance, Wake, and Warren.

(4) Distribution Region D consists of the following counties: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Orange, Rockingham, Rowan, and Stokes.

(5) Distribution Region E consists of the following counties: Anson, Cabarrus, Chatham, Hoke, Lee, Mecklenburg, Montgomery, Moore, Randolph, Richmond, Scotland, Stanly, and Union.

(6) Distribution Region F consists of the following counties: Alexander, Alleghany, Ashe, Avery, Caldwell, Catawba, Cleveland, Gaston, Iredell, Lincoln, Surry, Watauga, Wilkes, and Yadkin.

(7) Distribution Region G consists of the following counties: Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey."

SECTION 8. G.S. 136-17.2A(i) is repealed.

SECTION 9. Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-44.2D. Appalachian Development Highway System corridor funds.**

The Department of Transportation shall use all funds received from the Appalachian Regional Commission for the Appalachian Development Highway System to complete construction of the Appalachian Development Highway System roads."

SECTION 10. G.S. 160A-300.1(c1) reads as rewritten:

"(c1) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified ~~in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~on the traffic signal plan of record signed and sealed by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes, and shall comply with the provisions of the Manual on Uniform Traffic Control Devices."

SECTION 11. G.S. 160A-300.2(e), as enacted by Section 3 of S.L. 2001-286, reads as rewritten:

"(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified ~~in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~ on the traffic signal plan of record signed and sealed by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes, and shall comply with the provisions of the Manual on Uniform Traffic Control Devices."

SECTION 12. G.S. 160A-300.3(e), as enacted by Section 4 of S.L. 2001-286, reads as rewritten:

"(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified ~~in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~ on the traffic signal plan of record signed and sealed by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes, and shall comply with the provisions of the Manual on Uniform Traffic Control Devices."

SECTION 13. G.S. 160A-303(b1)(4) reads as rewritten:

"(4) Is left on any public street or highway for longer than seven ~~days.~~days or is determined by law enforcement to be a hazard to the motoring public."

SECTION 14. Sections 1, 2, 3, 4, and 6 of this act become effective December 1, 2009, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 1312:
Omnibus Highway/MV Statute Changes

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 27, 2009
Introduced by:	Rep. Martin	**Prepared by:**	Giles S. Perry
Analysis of:	PCS to Second Edition H1312-CSRW-47		Committee Counsel

SUMMARY: ***House Bill 1312 makes several changes to the highway and motor vehicle related laws of the State.***

CURRENT LAW & BILL ANALYSIS:

Section 1 of the bill amends the law requiring drivers to pull over and stop when approached by a fire or rescue vehicle giving a warning signal. The current requirement to pull over and stop does not apply when the fire or rescue vehicles is traveling in the opposite direction on a "four lane limited access highway with a median divider." This section changes the exception to *any* highway with a median divider.

Section 2 of the bill amends the requirement to "move over" when passing a parked emergency vehicle, to make clear it applies to public service vehicles.

Section 3 of the bill expands the current prohibition on parking on the *paved or main traveled way* of a highway *outside municipalities* to *all* of the State Highway system, both in and outside of municipalities.

Section 4 of the bill expands the current prohibition on parking on the *shoulder* of a highway *outside municipalities* to *all* of the State Highway system, both in and outside of municipalities.

Section 5 of the bill changes the time period in which the Division of Motor Vehicles must hold an administrative hearing for a violation of the motor vehicle inspection program statutes by an emissions inspection station license holder from three to fifteen days after receiving the request. (The provisions of this section were incorporated from House Bill 754).

Section 6 of the bill clarifies that the qualifications for operation and limitations on speed while operating a school bus or school activity bus apply if the bus is occupied by one child, or multiple children. (The provisions of this section were incorporated from House Bill 753).

Section 7 of the bill exempts funds from the Appalachian Regional Commission for the Appalachian Development Highway System from the State equity distribution formula for transportation funds expended on State intrastate system projects and under the State Transportation Improvement Program. **(this Section added by the PCS)**

Section 8 of the bill repeals the requirement that all funds derived from GARVEE bonds be distributed in accordance with the State equity distribution formula for transportation funds. GARVEE bonds are debt instrument financing mechanisms that use payment of future Federal-aid highway funds to retire the bond. The repealed language from current G.S. 136-17.2A(i) reads as follows: *"(i) All funds derived from "GARVEE" bonds issued pursuant to G.S. 136 18(12b) shall be distributed in accordance with this section."*

Section 9 of the bill directs DOT to use all funds it receives for the Appalachian Development Highway System from the Appalachian Regional Commission for construction of Appalachian Development Highway System roads. **(this Section added by the PCS)**

Sections 10, 11, and 12 of the bill amend the red light camera laws to change the standard to be used to determine the duration of a yellow light at red light camera intersections from the yellow light duration specified in the DOT Signals and Geometrics Section Design Manual to the duration in the traffic signal plan of record signed and sealed by a licensed professional engineer, and in compliance with Manual on Uniform Traffic Control Devices.

Section 13 of the bill changes the statute that authorizes municipalities to prohibit the abandonment of motor vehicles on public streets and on private property. This section would allow the removal and disposal of abandoned vehicles left on a public street at any time, if the motor vehicle is determined to be a hazard to the motoring public. Current law required the vehicle to have been left seven days.

EFFECTIVE DATE: Sections 1, 2, 3, 4 and 6 of this act become effective December 1, 2009, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

H1312-SMRW-144(CSRW-47) v1

SENATE JUDICIARY I COMMITTEE
(Civil)

June 2, 2009
10:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Tuesday, June 2, 2009, in Room 1027 of the Legislative Building. A quorum being present Committee Chairman Senator Martin Nesbitt called the meeting to order.

Chairman Nesbitt recognized Representative Moore to explain H.B. 315 – Plea Bargain Disclosure. Susan Sitze, Staff Counsel assisted with the explanation and after committee discussion Senator Clodfelter moved to give the bill a favorable report and it passed. Senator Brunstetter will handle the bill on the Senate floor.

Representative Ross was recognized to explain H.B. 1136 – Executive Branch Revolving Door. A Proposed Committee Substitute for H.B. 1136 was distributed to the members and Senator Stein moved that it be adopted for consideration. After discussion by the committee members Senator Stein moved to reconsider the motion to adopt the PCS and the motion passed. The original H.B. 1136 was before the committee. Staff Counsel Erika Churchill was recognized for comments. Senator Stein was concerned about language in the bill and staff was asked to prepare an amendment to address that concern. Senator Stein moved to amend the bill and the amendment was adopted. Senator Jenkins also moved to amend the bill and discussion followed. Erika Churchill answered questions and commented on the bill. Senator Rand moved that the Chair appoint a subcommittee to study the bill further. Chairman Nesbitt appointed Senator Jenkins, Senator Stein, Senator Hoyle, Senator Rand, Senator McKissick and Senator Clodfelter as Chair to work on the bill. The bill was displaced.

Representative Stam was recognized to explain H.B. 1190 – Preservation of DNA & Biological Evidence. During discussion by the committee Senator Hoyle wanted to do an amendment to require DNA. The bill was displaced.

The meeting was adjourned at 11:00 a.m.

Copies of H.B. 315, Bill Analysis for H.B. 315, H.B. 1136, Amendment for H.B. 1136, H.B. 1190, Bill Analysis for H.B. 1190, Amendment for H.B. 1190, are attached to these Minutes as Attachments 1,2,3,4,5,6,7, respectively.

Respectfully Submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W. Lee

Janette W. Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 315
Committee Substitute Favorable 5/13/09

Short Title: Plea Bargain Disclosure. (Public)

Sponsors:

Referred to:

February 26, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT REJECTION OF A PLEA ARRANGEMENT BY A JUDGE IN SUPERIOR COURT SHALL BE NOTED ON THE PLEA TRANSCRIPT AND BE MADE PART OF THE COURT RECORD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1023(b) reads as rewritten:

"(b) Before accepting a plea pursuant to a plea arrangement in which the prosecutor has agreed to recommend a particular sentence, the judge must advise the parties whether he approves the arrangement and will dispose of the case accordingly. If the judge rejects the arrangement, he must so inform the parties, refuse to accept the defendant's plea of guilty or no contest, and advise the defendant personally that neither the State nor the defendant is bound by the rejected arrangement. The judge must advise the parties of the reasons he rejected the arrangement and afford them an opportunity to modify the arrangement accordingly. Upon rejection of the plea arrangement by the judge the defendant is entitled to a continuance until the next session of court. A decision by the judge disapproving a plea arrangement is not subject to appeal. If a judge rejects a plea arrangement, then the judge shall order that the rejection be noted on the plea transcript and shall order that the plea transcript with the notation of the rejection be made a part of the record."

SECTION 2. G.S. 15A-1026 reads as rewritten:

"**§ 15A-1026. Record of proceedings.**

A verbatim record of the proceedings at which the defendant enters a plea of guilty or no contest and of any preliminary consideration of a plea arrangement by the judge pursuant to G.S. 15A- 1021(c) must be made and preserved. This record must include the judge's advice to the defendant, and his inquiries of the defendant, defense counsel, and the prosecutor, and any responses. If the plea arrangement has been reduced to writing, it must be made a part of the record; otherwise the judge must require that the terms of the arrangement be stated for the record and that the assent of the defendant, his counsel, and the prosecutor be recorded. If the judge rejects the plea arrangement under G.S. 15A-1023(b), then the rejection of the plea arrangement must also be made part of the record pursuant to G.S. 15A-1023(b)."

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

HOUSE BILL 315:
Plea Bargain Disclosure

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 29, 2009
Introduced by:	Rep. Moore	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 315 requires the rejection of a plea agreement by a judge in superior court to be noted on the plea transcript and be made part of the court record.***

CURRENT LAW: Under current law, before a plea arrangement involving the recommendation of a particular sentence can be accepted, it must be approved by the judge in the case. If the judge does not approve, the judge must advise the defendant that neither party is bound by the rejected arrangement, inform them of the reasons the arrangement was rejected and offer the parties an opportunity to modify the arrangement. If the judge rejects a plea arrangement, the defendant is entitled to a continuance until the next session of court.

BILL ANALYSIS: House Bill 315 requires a judge who rejects a plea arrangement to order that the rejection be noted on the plea transcript and to order that the plea transcript with the notation of the rejection be made a part of the record.

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to pleas accepted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

HOUSE BILL 1136

Short Title:	Executive Branch Revolving Door.	(Public)
Sponsors:	Representatives Ross, Stam (Primary Sponsors); M. Alexander, Folwell, Glazier, Harrison, Hurley, Jones, Lucas, Luebke, and Weiss.	
Referred to:	Ethics, if favorable, Judiciary I.	

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT CERTAIN EXECUTIVE BRANCH EMPLOYEES FROM REGISTERING AS A LOBBYIST FOR SIX MONTHS AFTER LEAVING EMPLOYMENT WITH THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120C-501 is amended by adding a new subsection to read:

"(f) No liaison personnel may register as a lobbyist within six months after separation from employment as a liaison personnel."

SECTION 2. G.S. 120C-304(c) reads as rewritten:

"(c) No public servant or former public servant as defined in ~~G.S. 138A-3(30)c.~~ G.S. 138A-3(30)c., d., any president, vice-president, chancellor, vice-chancellor of The University of North Carolina, or any president, chief financial officer, or chief administrative officer of the State Board of Community Colleges or each of the community colleges may register as a lobbyist under this Chapter within six months after separation from employment ~~as a public servant.~~with the State."

SECTION 3. This act becomes effective January 1, 2010.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **Attachment 4**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1136 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Stein
Sen)

moves to amend the bill on page 1, line 11

( ) WHICH CHANGES THE TITLE

by deleting "any"

and on page 1, line 12

by deleting "any"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 1190

Committee Substitute Favorable 4/23/09
Committee Substitute #2 Favorable 5/6/09

Short Title: Preservation of DNA & Biological Evidence. (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND STRENGTHEN THE LAW REGARDING THE PRESERVATION OF DNA AND BIOLOGICAL EVIDENCE THAT IS RELATED TO A CRIMINAL OFFENSE AND A DEFENDANT'S ACCESS TO THAT EVIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-266.1 reads as rewritten:

"**§ 15A-266.1. Policy.**

It is the policy of the State to assist federal, State, and local criminal justice and law enforcement agencies in the identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of felonies or violent crimes against the person. Identification, detection, and exclusion ~~is~~ are facilitated by the analysis of biological evidence that is often left by the perpetrator or is recovered from the crime scene. The analysis of biological evidence can also be used to identify missing persons and victims of mass disasters."

SECTION 2. G.S. 15A-266.2 reads as rewritten:

"**§ 15A-266.2. Definitions.**

As used in this Article, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) "CODIS" means the FBI's national DNA identification index system that allows the storage and exchange of DNA records submitted by State and local forensic DNA laboratories. The term "CODIS" is derived from Combined DNA Index System.

(1a) "Custodial Agency" means the governmental entity in possession of evidence collected as part of a criminal investigation or prosecution.

(2) "DNA" means deoxyribonucleic acid. DNA is located in the nucleus of cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

(3) "DNA Record" means DNA identification information stored in the State DNA Database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA typing tests. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification tests on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.

(4) "DNA Sample" in this Article means a ~~blood~~ blood, buccal, or any other sample provided by any person convicted of offenses covered by this Article or submitted to the SBI Laboratory for analysis pursuant to a criminal investigation.

(5) "FBI" means the Federal Bureau of Investigation.

(5a) "NDIS" means the National DNA Index System that is the system of DNA profile records which meet federal standards.

(6) "SBI" means the State Bureau of Investigation. The SBI is responsible for the policy management and administration of the State DNA identification record system to support law enforcement, and for liaison with the FBI regarding the State's participation in CODIS.

(7) "State DNA Database" means the SBI's DNA identification record system to support law enforcement. It is administered by the SBI and provides DNA records to the FBI for storage and maintenance in CODIS. The SBI's DNA Database system is the collective capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related to forensic casework, to convicted offenders required to provide a DNA sample under this Article, and to anonymous DNA records used for research or quality control.

(8) "State DNA Databank" means the repository of DNA samples collected under the provisions of this Article."

SECTION 3. G.S. 15A-267 reads as rewritten:

"**§ 15A-267. Access to DNA samples from crime scene.**

(a) A criminal defendant shall have access before trial to the following:

(1) Any DNA analyses performed in connection with the case in which the defendant is charged.

(2) Any biological material, that has not been DNA tested, that was collected from the crime scene, the defendant's residence, or the defendant's property.

(3) A complete inventory of all physical evidence collected in connection with the investigation.

(b) Access as provided for in subsection (a) of this section shall be governed by G.S. 15A-902 and G.S. 15A-952.

(c) Upon a defendant's motion made before trial in accordance with G.S. 15A-952, the court ~~may~~ shall order the SBI or any approved vendor that meets SBI contracting standards to perform DNA testing ~~and DNA Database comparisons of any biological material collected in connection with the case in which the defendant is charged~~ and, if the data meets NDIS criteria, order the SBI to search and/or upload to CODIS any profiles obtained from the testing upon a showing of all of the following:

(1) That the biological material is relevant to the investigation.

(2) That the biological material was not previously DNA tested or that more accurate testing procedures are now available that were not available at the time of previous testing and there is a reasonable possibility that the result would have been different.

(3) That the testing is material to the defendant's defense.

(d) The defendant shall be responsible for bearing the cost of any further testing and comparison of the biological materials, including any costs associated with the testing and comparison by the SBI in accordance with this section, unless the court has determined the defendant is indigent, in which event the State shall bear the costs."

SECTION 4. G.S. 15A-268 reads as rewritten:

"**§ 15A-268. Preservation of biological evidence.**

(a) As used in this section, the term "biological evidence" includes the contents of a sexual assault examination kit or any item that contains blood, semen, hair, saliva, skin tissue, fingerprints, or other identifiable human biological ~~material,~~ material that may reasonably be used to incriminate or exculpate any person in the criminal investigation, whether that material is catalogued separately on a slide or swab, in a test tube, or some other similar method, or is present on clothing, ligatures, bedding, other household materials, drinking cups, cigarettes, or any other item of evidence.

(a1) Notwithstanding any other provision of law and subject to subsection (b) of this section, a ~~governmental entity in custody of evidence~~ custodial agency shall preserve any physical evidence that is reasonably likely to contain any biological evidence collected in the course of a criminal investigation or prosecution. Evidence shall be preserved in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, subject to a continuous chain of custody, and securely retained with sufficient official documentation to locate the evidence.

(a2) The SBI shall promulgate and publish minimum guidelines that meet the requirements for retention and preservation of biological evidence under subsection (a1) of this section. Guidelines shall be published no later than January 1, 2010, and shall be reviewed and updated biennially thereafter. Law enforcement agencies and the Conference of Clerks of Superior Court shall ensure the guidelines are distributed to all employees with responsibility for maintaining custody of evidence.

(a3) When physical evidence is offered or admitted into evidence in a criminal proceeding of the General Court of Justice, the presiding judge shall inquire of the State and defendant as to the identity of the collecting agency of the evidence and whether the evidence in question is reasonably likely to contain biological evidence and if that biological evidence is relevant to establishing the identity of the perpetrator in the case. If either party asserts that the evidence in question may have biological evidentiary value, and the court so finds, the court shall instruct that the evidence be so designated in the court's records and that the evidence be preserved pursuant to the requirements of this section.

(a4) If evidence has been designated by the court as biological evidence pursuant to subsection (a3) of this section, the clerk of superior court that takes custody of evidence pursuant to the rules of practice and procedure for the superior and district courts as adopted by the Supreme Court pursuant to G.S. 7A-34 shall preserve such evidence consistent with subsection (a1) of this section. Upon conclusion of the clerk's role as custodian, as provided in the applicable rules of practice, the clerk shall return such evidence to the collecting agency, as determined in subsection (a3) of this section, in a manner that ensures the chain of custody is maintained and documented.

(a5) The duty to preserve may not be waived knowingly and voluntarily by a defendant, without a court proceeding.

~~(a2)~~(a6) The evidence described by subsection (a1) of this section shall be preserved for the following period:

(1) For conviction resulting in a sentence of death, until execution.

(1a) For conviction resulting in a sentence of life without parole, until the death of the convicted person.

(1b) For conviction of any homicide, sex offense, assault, kidnapping, burglary, robbery, arson or burning, for which a Class B1-E felony punishment is imposed, the evidence shall be preserved during the period of incarceration and mandatory supervised release, including sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for the earlier of three years from the date of conviction or until released.

~~(2) For conviction of a violent felony, as defined in G.S. 14-7.7(b), the evidence shall be preserved during the period of incarceration except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for three years from the date of conviction.~~

~~(3) For conviction of an offense requiring sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, during the period of incarceration and any period of mandatory supervised release or probation.~~

~~(4) For conviction of any felony not governed by subdivisions (1), (2), or (3) of this subsection for which the defendant's genetic profile may be taken by a law enforcement agency and included in the State DNA database, the evidence shall be preserved for a period of seven years from the date of conviction except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for three years from the date of conviction.~~

(5) Biological evidence collected as part of a criminal investigation of any homicide or rape, in which no charges are filed, shall be preserved for the period of time that the crime remains unsolved.

(6) A custodial agency in custody of biological evidence unrelated to a criminal investigation or prosecution referenced by subdivision (1), (1a), (1b), or (5) of this subsection may dispose of the evidence in accordance with the rules of the agency.

(a7) Upon written request by the defendant, the custodial agency shall prepare an inventory of biological evidence relevant to the defendant's case that has been preserved pursuant to this section.

(b) The ~~governmental entity~~ custodial agency required to preserve evidence pursuant to subsection (a1) of this section may ~~petition the court for an order allowing for disposition~~ dispose of the evidence prior to the expiration of the period of time described in subsection ~~(a2)~~(a6) of this section if all of the following conditions are met:

(1) The ~~governmental entity~~ custodial agency sent notice of its intent to dispose of the evidence to the district attorney in the county in which the conviction was obtained.

(2) The district attorney gave to each of the following persons written notification of the intent of the ~~governmental entity~~ custodial agency to dispose of the evidence: any defendant convicted of a felony who is currently incarcerated in connection with the case, the defendant's ~~current~~ counsel of ~~record,~~record for that case, and the Office of Indigent Defense ~~Services, and the Attorney General.~~Services. The notice shall be consistent with the provisions of this section, and the district attorney shall send a copy of the notice to the ~~governmental entity.~~custodial agency. Delivery of written notification from the district attorney to the defendant was effectuated by the district attorney transmitting the written notification to the superintendent of the correctional facility where the defendant was assigned at the time and the superintendent's personal delivery of the written notification to the defendant. Certification of delivery by the superintendent to the defendant in accordance with this subdivision was in accordance with subsection (c) of this section.

(3) The written notification from the district attorney specified the following:

a. That the ~~governmental entity~~custodial agency would destroy the evidence collected in connection with the case unless the

~~governmental entity~~custodial agency received a written request that the evidence not be destroyed.

b. The address of the ~~governmental entity~~custodial agency where the written request was to be sent.

c. That the written request from the defendant, or his or her representative, must be received by the ~~governmental entity~~ custodial agency within 90 days of the date of receipt by the defendant of the district attorney's written notification.

d. That the written request must ask that the ~~material~~ evidence not be destroyed or disposed of for one of the following reasons:

1. The case is currently on appeal.
2. The case is currently in postconviction proceedings.
3. The defendant will file ~~within 180 days of the date of receipt by the defendant of the district attorney's written notification~~ a motion for DNA testing pursuant to ~~G.S. 15A-269, that is followed~~ G.S. 15A-269 within 180 days of ~~sending the request that the evidence not be destroyed or disposed of, by a motion for DNA testing pursuant to G.S. 15A-269,~~ the postmark of the defendant's response to the district attorney's written notification of the governmental entity's intent to dispose of the evidence, unless a request for extension is requested by the defendant and agreed to by the ~~governmental entity in possession of the evidence.~~custodial agency.

(4) The ~~governmental entity~~ custodial agency did not receive a written request in compliance with the conditions set forth in sub-subdivision (3)d. of this subsection within 90 days of the date of receipt by the defendant of the district attorney's written notification.

(c) Upon receiving a written notification from a district attorney in accordance with subdivision (b)(3) of this section, the superintendent shall personally deliver the written notification to the defendant. Upon effectuating personal delivery on the defendant, the superintendent shall sign a sworn written certification that the written notification had been delivered to the defendant in compliance with this subsection indicating the date the delivery was made. The superintendent's certification shall be sent by the superintendent to the ~~governmental entity~~ custodial agency that intends to dispose of the sample of evidence. The ~~governmental entity~~ custodial agency may rely on the superintendent's certification as evidence of the date of receipt by the defendant of the district attorney's written notification.

(d) After a ~~hearing,~~ hearing held in response to a defendant's written request that the evidence not be destroyed in response to notice pursuant to subsection (b) of this section, the court may enter an order authorizing the ~~governmental entity~~ custodial agency to dispose of the evidence if the court determines by the preponderance of the evidence that the evidence:

(1) Has no significant value for biological analysis and should be returned to its rightful owner, destroyed, used for training purposes, or otherwise disposed of as provided by law; or

~~(2) Has no significant value for biological analysis and is of a size, bulk, or physical characteristic not usually retained by the governmental entity and cannot practically be retained by the governmental entity; or~~

(3) May have value for biological analysis but is of a size, bulk, or physical ~~characteristic not usually retained by the governmental entity and cannot practically be retained by the governmental entity.~~character as to render retention impracticable or should be returned to its rightful owner.

(e) The court order allowing the disposition of the evidence pursuant to ~~this section may~~ subdivision (d)(3) of this section shall require the ~~governmental entity to~~ custodial agency to return such evidence to the collecting agency. The collecting agency shall take reasonable measures to remove or preserve portions of evidence ~~suitable for future biological testing or~~ likely to contain biological evidence related to the offense through cuttings, swabs, or other means consistent with SBI minimum guidelines in a quantity sufficient to permit DNA testing before returning or disposing of the evidence. The court may provide the defendant an opportunity to take reasonable measures to preserve the evidence.

(f) An order regarding the disposition of evidence pursuant to this section shall be a final and appealable order. The defendant shall have 30 days from the entry of the order to file notice of appeal. The governmental entity shall not dispose of the evidence while the appeal is pending.

(g) If an entity is asked to produce evidence that is required to be preserved under the provisions of this section and cannot produce the evidence, the chief evidence custodian of the custodial agency shall provide an affidavit in which he or she describes, under penalty of perjury, the efforts taken to locate the evidence and affirms that the evidence could not be located. If the evidence that is required to be preserved pursuant to this section has been destroyed, the court may conduct a hearing to determine whether obstruction of justice and contempt proceedings are in order. If the court finds the destruction violated the defendant's due process rights, the court shall order an appropriate remedy, which may include dismissal of charges.

(h) All records documenting the possession, control, storage, and destruction of evidence related to a criminal investigation or prosecution of an offense referenced in subdivision (1), (1a), (1b), or (5) of subsection (a6) of this section shall be retained.

(i) Whoever knowingly and intentionally destroys, alters, conceals, or tampers with evidence that is required to be preserved under this section, with the intent to impair the integrity of that evidence, prevent that evidence from being subjected to DNA testing, or prevent production or use of that evidence in an official proceeding, shall be punished as follows:

(1) If the evidence is for a noncapital crime, then a violation of this subsection is a Class I felony.

(2) If the evidence is for a crime of first degree murder, then a violation of this subsection is a Class H felony."

SECTION 5. G.S. 15A-269 reads as rewritten:

"**§ 15A-269. Request for postconviction DNA testing.**

(a) A defendant may make a motion before the trial court that entered the judgment of conviction against the defendant for performance of DNA testing ~~of any~~ and, if testing complies with FBI requirements and the data meets NDIS criteria, profiles obtained from the testing shall be searched and/or uploaded to CODIS if the biological evidence ~~that~~ meets all of the following conditions:

(1) Is material to the defendant's defense.

(2) Is related to the investigation or prosecution that resulted in the judgment.

(3) Meets either of the following conditions:

a. It was not DNA tested previously.

b. It was tested previously, but the requested DNA test would provide results that are significantly more accurate and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

(b) The court shall grant the motion for DNA testing and, if testing complies with FBI requirements, the run of any profiles obtained from the testing, ~~of the evidence~~ upon its determination that:

(1) The conditions set forth in subdivisions (1), (2), and (3) of subsection (a) of this section have been met;

(2) If the DNA testing being requested had been conducted on the evidence, there exists a reasonable probability that the verdict would have been more favorable to the defendant; and

(3) The defendant has signed a sworn affidavit of innocence.

(b1) If the court orders DNA testing, such testing shall be conducted by an SBI-approved testing facility, mutually agreed upon by the petitioner and the State and approved by the court. If the parties cannot agree, the court shall designate the testing facility and provide the parties with reasonable opportunity to be heard on the issue.

(c) The court shall appoint counsel for the person who brings a motion under this section if that person is indigent. If the petitioner has filed pro se, the court shall appoint counsel for the petitioner upon a showing that the DNA testing may be material to the petitioner's claim of wrongful conviction.

(d) The defendant shall be responsible for bearing the cost of any DNA testing ordered under this section unless the court determines the defendant is indigent, in which event the State shall bear the costs.

(e) DNA testing ordered by the court pursuant to this section shall be done as soon as practicable. However, if the court finds that a miscarriage of justice will otherwise occur and that DNA testing is necessary in the interests of justice, the court shall order a delay of the proceedings or execution of the sentence pending the DNA testing.

(f) Upon receipt of a motion for postconviction DNA testing, the custodial agency shall inventory the evidence pertaining to that case and provide the inventory list, as well as any documents, notes, logs, or reports relating to the items of physical evidence, to the prosecution, the petitioner, and the court.

(g) Upon receipt of a motion for postconviction DNA testing, the State shall, upon request, reactivate any victim services for the victim of the crime being investigated during the reinvestigation of the case and pendency of the proceedings.

(h) Nothing in this Article shall prohibit a convicted person and the State from consenting to and conducting postconviction DNA testing by agreement of the parties, without filing a motion for postconviction testing under this Article."

SECTION 6. G.S. 15A-270.1 reads as rewritten:

"**§ 15A-270.1. Right to appeal denial of defendant's motion for DNA testing.**

The defendant may appeal an order denying the defendant's motion for DNA testing under this Article, including by an interlocutory appeal. The court shall appoint counsel upon a finding of indigency."

SECTION 7.(a) The Joint Select Study Committee on the Preservation of Biological Evidence is established. The membership shall be as follows:

(1) Three members of the Senate appointed by the President Pro Tempore of the Senate.

(2) Three members of the House of Representatives appointed by the Speaker of the House of Representatives.

(3) The Attorney General or the Attorney General's designee.

(4) The Director of the SBI or the Director's designee.

(5) The Director of the Administrative Office of the Courts or the Director's designee.

(6) The President of the North Carolina Association of Clerks of Superior Court or the President's designee.

(7) The President of the North Carolina Association of Chiefs of Police or the President's designee.

(8) The President of the North Carolina Sheriffs' Association or the President's designee.
(9) The President of North Carolina Advocates for Justice or the President's designee.
(10) One North Carolina district attorney appointed by the Speaker of the House of Representatives.
(11) One North Carolina district attorney appointed by the President Pro Tempore of the Senate.

The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint one legislative member of the Committee to serve as cochair. The Committee shall meet upon the call of the cochairs. A quorum of the Committee shall be a majority of its members.

SECTION 7.(b) The Committee shall review matters related to the preservation of DNA and biological evidence, including:

(1) The costs associated with the promulgation of minimum guidelines for the retention and preservation of biological evidence.
(2) Emerging technologies with regard to the retention and preservation of biological evidence.
(3) Procedures for the interagency transfer of biological evidence.
(4) Any other topic the Committee believes is related to its purpose.

SECTION 7.(c) 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. The expenses of the Committee shall be considered expenses incurred for the joint operation of the General Assembly. All expenses of the Committee shall be paid from the Legislative Services Commission's Reserve for Studies. The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work.

SECTION 7.(d) The Committee shall submit a final report on the results of its study, including any proposed legislation, to the General Assembly on or before April 1, 2010. The Committee shall file a copy of its report with the President Pro Tempore's office, the Speaker's office, and the Legislative Library. The Committee shall terminate on April 1, 2010, or upon the filing of its final report, whichever occurs first.

SECTION 8. Section 7 of this act is effective when it becomes law. The remainder of this act becomes effective December 1, 2009.

HOUSE BILL 1190:
Preservation of DNA & Biological Evidence

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 29, 2009
Introduced by:	Reps. Glazier, Stam, Ross	**Prepared by:**	Susan Sitze*
Analysis of:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 1190 amends the law regarding the preservation of DNA and biological evidence related to a criminal offense, and the defendant's access to that evidence. The bill also creates a Joint Select Committee on the Preservation of Biological Evidence.***

CURRENT LAW: The DNA Database and Databank Act (Article 13 of Chapter 15A of the General Statutes) establishes the policy and procedures for the collection, analysis, preservation, and use of biological evidence in connection with criminal offenses.

BILL ANALYSIS: House Bill 1190 amends the law regarding the preservation of DNA and biological evidence related to a criminal offense, and the defendant's access to that evidence.

Section 2 defines "custodial agency" as any governmental entity in possession of evidence collected as part of a criminal investigation or prosecution, and amends the definition of "DNA sample" to include not only blood samples but also samples from the cheeks or mouth and any other sample provided by a person convicted of a criminal offense covered by the DNA Database and Databank Act.

Section 3 adds a provision requiring that a criminal defendant have access before trial to a complete inventory of all physical evidence collected in connection with the investigation. It would allow certain accredited labs to perform required DNA testing of biological material collected in connection with the criminal case and require the SBI to search and upload to CODIS any profiles obtained from the testing, if the biological material is relevant to the investigation or testing is material to the defendant's defense.

Section 4 of the bill provides for the retention and preservation of biological evidence.

- It amends the definition of "biological evidence" to include fingerprints and other human biological material which may reasonably be used to incriminate or exculpate any person in the course of a criminal investigation.
- It requires the SBI to establish minimum guidelines for the retention and preservation of biological evidence in a manner that would prevent contamination or degradation of the evidence and provide a continuous chain of custody with sufficient official documentation to locate the evidence. The guidelines are to be published by January 1, 2010, and distributed by law enforcement agencies and clerks of court to all employees with responsibility for maintaining custody of evidence. The guidelines would be reviewed and updated biennially.
- It requires the judge in a criminal proceeding to determine whether physical evidence offered or admitted into evidence is reasonably likely to contain biological evidence relevant to establishing the identity of the perpetrator in the case; and if either party asserts that to be the case, the court must designate it as biological evidence and instruct that the evidence be properly preserved by the clerk of superior court until such time as it is returned to the collecting agency. The duty to preserve cannot be waived knowingly and voluntarily by a defendant without a court proceeding.
- It rewrites the law pertaining to the applicable time periods for the preservation of biological evidence collected in the course of a criminal investigation or prosecution, and requires the agency in possession of the evidence to prepare an inventory of biological evidence relevant to

the defendant's case if requested by the defendant. It establishes the following time periods for the preservation of biological evidence:

- Sentence of death – until execution
- Sentence of life without parole – until the death of the convicted person
- Any homicide, sex offense, assault, kidnapping, burglary, robbery, arson or burning, for which a Classes B1-E felony punishment is imposed – for the duration of the period of incarceration and mandatory supervised release, including sex offender registration. If there was a guilty plea, the evidence would be preserved for the earlier of three years from the date of conviction or until release.
- Any criminal investigation of a homicide or rape in which no charges are filed – the period of time that the crime remains unsolved.
- Any biological evidence unrelated to a criminal investigation or prosecution for which a time period for preservation is unspecified could be disposed of by a governmental entity in accordance with rules of its governing agency.

- It provides that if a custodial agency is asked for and cannot produce evidence that is required to be preserved, the chief custodian must provide an affidavit describing efforts taken to locate the evidence and affirming that the evidence could not be located. If the evidence has been destroyed, and the court finds that the destruction violated the defendant's due process rights, the court must order an appropriate remedy, which may include dismissal of charges.

Disposition of Evidence – Section 4 of the bill also eliminates the requirement for the agency having custody of evidence to petition the court for an order allowing for disposition of the evidence before the expiration of the prescribed time period for preservation of the evidence. The bill retains existing provisions requiring notice of the intent to dispose of evidence, but a hearing would be held only in response to the defendant's request that the evidence not be destroyed. If a hearing is held upon written request of a defendant, the court could authorize the custodial agency to dispose of the evidence if it determines that the evidence has no significant value for biological evidence or is of a size and bulk as to render retention impracticable. The court order would then allow disposition of the evidence, but require the custodial agency to remove or preserve those portions of the evidence likely to contain biological evidence using cuttings, swabs, or other means that would permit DNA testing. The defendant would have 30 days in which to appeal the order.

Retention of Records – Section 4 of the bill requires that all records documenting the possession, control, storage, and destruction of evidence related to the specified criminal offenses be retained.

Criminal Penalty – The bill creates a criminal penalty for anyone who knowingly and intentionally destroys, conceals, or tampers with evidence that is required to be preserved, with the intent to impair the integrity of the evidence, prevent DNA testing, or prevent use of the evidence in an official proceeding. Violation would be a Class I felony for a noncapital crime; for evidence for a crime of 1st degree murder, violation would be a Class H felony.

Post Conviction DNA Testing -- Section 5 of the bill amends the law concerning a defendant's request for postconviction DNA testing. The bill provides for the uploading to CODIS of profiles obtained from DNA testing that complies with FBI requirements. (*CODIS is the acronym for the Combined DNA Index System, the FBI computer system that stores DNA profiles created by federal, state, and local crime laboratories in the United States, with the ability to search the database to assist in the identification of suspects in crimes.*) The bill would require that any court-ordered DNA testing be conducted by SBI

approved facilities mutually agreed upon by the petitioner and the State and approved by the court. If a defendant has filed without an attorney, the court would be required to appoint counsel for the petitioner upon a showing that DNA testing may be material to the petitioner's claim of wrongful conviction. Upon receipt of a motion for postconviction DNA testing, the custodial agency would be required to inventory the evidence pertaining to the case and provide the inventory list to the prosecution, the petitioner, and the court; the State would be required, upon request, to reactivate victim services for the victim of the crime being investigated. A convicted person and the State may consent to and conduct postconviction DNA testing by agreement and without filing a motion.

Section 6 of the bill requires the court to appoint counsel for an indigent defendant appealing an order denying the defendant's motion for DNA testing.

Section 7 of the bill creates a Joint Select Study Committee on the Preservation of Biological Evidence to consider issues including agency costs, the effect of emerging technologies, and procedures for the transfer of evidence. The report would report to the General Assembly not later than April 1, 2010.

EFFECTIVE DATE: The section creating the study committee would be effective when the bill becomes law. The remainder of the bill would become effective December 1, 2009.

**Brenda Carter and Drupti Chauhan, Staff Attorneys, significantly contributed to this summary.*

Attachment 7

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1190

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

H1190-ASA-21 [v.1]

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

Date June 2, ,2009

Senator Stein

moves to amend the bill on page 1, line 23
by rewriting the line to read:
"evidence collected as part of a criminal investigation or prosecution. This term includes a central evidence storage facility operated by a State agency."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE JUDICIARY I COMMITTEE
(Civil)

June 4, 2009
10:00 a.m. – Room 1027

The Senate Judiciary I Committee met Thursday, June 4, 2009, in Room 1027 of the Legislative Building. Senators present were: Committee Chairman Martin Nesbitt; Vice Chairmen Dan Clodfelter, R. C. Soles, and Josh Stein; members Senators Andrew Brock, Harry Brown, David Hoyle, Clark Jenkins, Ellie Kinnaird, Floyd McKissick, and Jerry Tillman; Staff Counsel Erika Churchill, and Giles Perry; Committee Assistants Jan Lee and Jessica Bennett.

Chairman Nesbitt explained that the first bill to be taken up would be a local bill, Committee Substitute for H.B. 538 – Charlotte/Mecklenburg. He said because of the situation that they had a few counties that are out of compliance and this bill was introduced to bring the counties into compliance with the law. It is a technical change and as required a Court Recorder was present to record all of the information that transpired. Representative Cotham was recognized to explain the bill and after questions and discussion by the committee members. Senator McKissick made the motion to give the bill a favorable report and it passed unanimously.

Chairman Nesbitt recognized Staff Counsel Erika Churchill to explain H.B. 1621 – Pender/New Hanover House Districts. Erika presented maps showing Pender and New Hanover Counties District 16 and 18 the area that is under discussion due to the U.S. Supreme Court ruling that Pender County House redistricting plan in 2003 is not in compliance with the law and needs to be redrawn and this is what this bill is about. Representative Martin introducer of H.B. 1621 assisted in explaining the bill and explained how it made it through the House. Also Senator Soles, Representative Sandra Hughes and Representative Justus who represent this area spoke in favor of the bill. After questions and discussion Senator Soles made the motion to give H.B. 1621 a favorable report and it passed unanimously.

Chairman Nesbitt recognized Representative Warren to explain H.B. 787 Committee Substitute – Increase Penalty/Remove Serial Number From Gun. Representative Warren explained the bill and after questions and discussion Senator Soles moved to amend the bill and the committee voted unanimously for the amendment. Senator Hoyle made a motion to roll the amendment into H.B. 787 Committee Substitute and make it a Senate Committee Substitute for H.B. 787 and give it a favorable report and unfavorable to H.B. 787 Committee Substitute. The committee voted unanimously in favor.

Chairman Nesbitt recognized Representative Glazier to explain H.B. 1190 Committee Substitute #2 – Preservation of DNA & Biological Evidence. Senator Nesbitt said this is a PCS for H.B. 1190 and on motion by Senator Soles it was adopted for discussion. Representative Glazier explained the PCS for H.B.1190. Senator Stein offered an amendment and it passed unanimously. The amendment will be put into the PCS #2 and

on motion made by Senator Brown the Senate Proposed Committee Substitute will be given a favorable report. The committee voted unanimously in favor.

The meeting adjourned at 11:00 a.m.

Copies of C.S. for H.B. 538, Bill Analysis for H.B. 538, H.B. 1621, Data re: H.B. 1621Pender/New Hanover House Districts, Maps, Transcript of The Proceedings, C.S. for H.B. 787, Bill Analysis for H.B. 787, Amendment for H.B. 787, C.S.#2 for H.B. 1190, Bill Analysis for H.B. 1190 are attached to these Minutes as Attachments 1,2,3,4,5,6,7,8,9,10,11,12,13 respectively.

Respectfully Submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W. Lee

Janette W. Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 538*
Committee Substitute Favorable 4/21/09

Short Title: Char/Meck School Board Police. (Local)

Sponsors:

Referred to:

March 12, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CHARLOTTE-MECKLENBURG BOARD OF EDUCATION TO MAINTAIN A CAMPUS POLICE AGENCY.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-47.1. Campus law enforcement agencies.**

(a) A local board of education may establish a campus law enforcement agency and employ campus police officers. These officers shall meet the requirements of Chapter 17C of the General Statutes, shall take the oath of office prescribed by Article VI, Section 7 of the Constitution, and shall have all the powers of law enforcement officers generally. The territorial jurisdiction of a campus police officer shall include all property owned or leased to the local board of education employing the officer and that portion of any public road or highway passing through the property or immediately adjoining it, wherever located.

(b) A local board of education that establishes a campus law enforcement agency under subsection (a) of this section may enter into joint agreements with the governing board of any municipality to extend the territorial jurisdiction of campus police officers into any or all of the municipality's jurisdiction and to determine the circumstances under which this extension of authority may be granted.

(c) A local board of education that establishes a campus law enforcement agency under subsection (a) of this section may enter into joint agreements with the governing board of any county, with the consent of the sheriff, to extend the territorial jurisdiction of campus police officers into any or all of the county and to determine the circumstances under which this extension of authority may be granted.

(d) The subject matter jurisdiction of campus police officers on property not owned or leased to the local board of education and within the territorial jurisdictions established pursuant to an agreement authorized by subsection (b) or (c) of this section shall be limited to investigations or arrests arising out of activities related to their duties, responsibilities, and authority as employees of a local board of education."

SECTION 2. This act shall apply to the Charlotte-Mecklenburg Board of Education only.

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

SENATE JUDICIARY I COMMITTEE
(Civil)

June 4, 2009
10:00 a.m. – Room 1027

The Senate Judiciary I Committee met Thursday, June 4, 2009, in Room 1027 of the Legislative Building. Senators present were: Committee Chairman Martin Nesbitt; Vice Chairmen Dan Clodfelter, R. C. Soles, and Josh Stein; members Senators Andrew Brock, Harry Brown, David Hoyle, Clark Jenkins, Ellie Kinnaird, Floyd McKissick, and Jerry Tillman; Staff Counsel Erika Churchill, and Giles Perry; Committee Assistants Jan Lee and Jessica Bennett.

Chairman Nesbitt explained that the first bill to be taken up would be a local bill, Committee Substitute for H.B. 538 – Charlotte/Mecklenburg He said because of the situation that they had a few counties that are out of compliance and this bill was introduced to bring the counties into compliance with the law. It is a technical change and as required a Court Recorder was present to record all of the information that transpired. Representative Cotham was recognized to explain the bill and after questions and discussion by the committee members. Senator McKissick made the motion to give the bill a favorable report and it passed unanimously.

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Chairman Nesbitt recognized Representative Glazier to explain H.B. 1190 Committee Substitute #2 – Preservation of DNA & Biological Evidence. Senator Nesbitt said this is a PCS for H.B. 1190 and on motion by Senator Soles it was adopted for discussion. Representative Glazier explained the PCS for H.B.1190. Senator Stein offered an amendment and it passed unanimously. The amendment will be put into the PCS #2 and

on motion made by Senator Brown the Senate Proposed Committee Substitute will be given a favorable report. The committee voted unanimously in favor.

The meeting adjourned at 11:00 a.m.

Copies of C.S. for H.B. 538, Bill Analysis for H.B. 538, H.B. 1621, Data re: H.B. 1621Pender/New Hanover House Districts, Maps, Transcript of The Proceedings, C.S. for H.B. 787, Bill Analysis for H.B. 787, Amendment for H.B. 787, C.S.#2 for H.B. 1190, Bill Analysis for H.B. 1190 are attached to these Minutes as Attachments 1,2,3,4,5,6,7,8,9,10,11, respectively.

Respectfully Submitted,

_____

Senator Martin L. Nesbitt
Chairman

_____

Janette W. Lee
Committee Assistant

HOUSE BILL 538:
Char/Meck School Board Police

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 3, 2009
Introduced by:	Reps. Cotham, Tillis	**Prepared by:**	Susan Sitze* Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***House Bill 538 would allow a local board of education to establish a campus law enforcement agency and employ campus police officers. The bill would apply only to the Charlotte Mecklenburg Board of Education.***

[As introduced, this bill was identical to S270, as introduced by Sen. Clodfelter, which is currently in Senate Judiciary I.]

BILL ANALYSIS: House Bill 538 would allow a local board of education to establish an independent campus law enforcement agency and employ campus police officers who:

- Meet the requirements of the North Carolina Criminal Justice Education and Training Standards (Chapter 17C of the General Statutes); and
- Take the oath of office prescribed by the State Constitution.
- The territorial jurisdiction of a campus police officer would include all property owned or leased to the local board of education employing the officer and the portion of any public road or highway passing through the property or immediately adjoining it.
- A local board of education that establishes a campus law enforcement agency would be able to enter into joint agreements with the governing board of any municipality to extend the territorial jurisdiction of the campus police officers into the municipality's jurisdiction and determine the circumstances under which this extension of authority may be granted.
- A local board of education would be able to also enter joint agreements with the governing board of any county, with the consent of the sheriff, to extend the territorial jurisdiction of the campus police officers into the county's jurisdiction and determine the circumstances under which the extension of authority may be granted.
- The subject matter jurisdiction of the campus police officers on property not owned or leased to the local board of education (but within the territorial jurisdictions established pursuant to the joint agreements with the municipality or county) would be limited to investigations or arrests that arise out of activities related to campus police officers' duties as employees of the local board of education.

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

BACKGROUND: Charlotte Mecklenburg Schools currently has a Law Enforcement Division with 10 police officers who have obtained their police certification as reserve officers of the Charlotte Mecklenburg Police Department.

According to the Attorney General's office, there are about 8 school systems that have created a police force under the Company Police Act in Chapter 74E which have strict territorial jurisdictional limitations. Officers under the Company Police Act have authority on the real property of their employer unless they are in the continuous and immediate pursuit of a person for an offense committed on that real property.

G.S. 116-40.5 authorizes the Boards of Trustees of any constituent institution of The University of North Carolina, or of any teaching hospital affiliated with constituent institutions of The University of North Carolina, to establish a campus law enforcement agency and employ campus police officers.

Officers employed by campus law enforcement agencies under this section are required to comply with the requirements of the Criminal Justice Education and Training Standards Commission set out in Chapter 17C of the General Statutes and are constitutionally sworn law enforcement officers. The territorial jurisdiction of such officers includes the property owned and leased to the employing institution and the portions of any public road or highway passing through or immediately adjoining the property.

Boards of Trustees establishing campus law enforcement agencies may also enter into joint agreements with the governing boards of municipalities, counties, and any other constituent institution of The University of North Carolina to extend the law enforcement authority of campus police into those jurisdictions.

Chapter 74G of the General Statutes authorizes private institutions of higher education to establish campus police agencies. The territorial jurisdiction of such agencies includes the property owned and leased to the employing institution and the portions of any public road or highway passing through or immediately adjoining the property. Additionally, the governing body of the institution of higher education may also enter into joint agreements with the governing boards of municipalities, counties and any other public or private educational institution that has a campus police agency to extend the law enforcement authority of the campus police agency into those jurisdictions.

The constituent institutions of The University of North Carolina may choose to establish a campus police agency pursuant to either G.S. 116-40.5 or the provisions of Chapter 74G.

**Drupti Chauhan and Hal Pell,, Staff Attorneys, substantially contributed to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

HOUSE BILL 1621

Short Title:	Pender/New Hanover House Districts.	(Public)
Sponsors:	Representatives Martin; E. Floyd and Hughes.	
Referred to:	Pender/New Hanover Redistricting.	

May 7, 2009

A BILL TO BE ENTITLED

AN ACT TO REALIGN THE DISTRICTS IN PENDER AND NEW HANOVER COUNTIES FOR THE ELECTION OF MEMBERS OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES TO BE IN COMPLIANCE WITH THE ORDER OF THE UNITED STATES SUPREME COURT IN BARTLETT V. STRICKLAND.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-2 reads as rewritten:

"**§ 120-2. House apportionment specified.**

(a) For the purpose of nominating and electing members of the North Carolina House of Representatives in 2004 and periodically thereafter, the State of North Carolina shall be divided into the following districts with each district electing one Representative:

...

District 16: ~~New Hanover County: Precinct Cape Fear 2: Tract 116.04: Block Group 1: Block 1000, Block 1001, Block 1004, Block 1005, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004, Block 2005; Precinct Cape Fear 3: Tract 116.03: Block Group 2: Block 2002, Block 2003, Block 2004, Block 2017, Block 2018, Block 2019, Block 2020; Block Group 3: Block 3010; Block Group 4: Tract 116.04: Block Group 2: Block 2006, Block 2007, Block 2026, Block 2027, Block 2031, Block 2034, Block 2035; Block Group 3: Block 3003, Block 3004, Block 3005, Block 3006, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033; Precinct Harnett 1, Precinct Harnett 2 & 8, Precinct Harnett 4, Precinct Harnett 5, Precinct Harnett 6, Precinct Harnett 7: Tract 116.04: Block Group 2: Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2028, Block 2029, Block 2030, Block 2032, Block 2033, Block 2036, Block 2037; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3007, Block 3008, Block 3009, Block 3010, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3039, Block 3040, Block 3041, Block 3042, Block 3043, Block 3044, Block 3045, Block 3046, Block 3047, Block 3048, Block 3049, Block 3050, Block 3051, Block 3052, Block 3053, Block 3054, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065; Precinct Harnett 9, Precinct Wilmington 12: Tract 104: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1019, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031; Block Group 2: Block 2000, Block 2012; Precinct Wilmington 13: Tract 105.01: Block Group 2: Block 2005; Tract 105.02: Block Group 4: Block 4000, Block 4008, Block 4009; Precinct Wilmington 18,~~

~~Precinct Wilmington 22, Precinct Wilmington 23, Precinct Wilmington 24; Pender County: Precinct Burgaw South: Tract 9804: Block Group 1: Block 1000; Block Group 2: Block 2000, Block 2024, Block 2025, Block 2026, Block 2027, Block 2029, Block 2998, Block 2999; Precinct Rocky Point: Tract 9802: Block Group 2: Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2035, Block 2036, Block 2037, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2044, Block 2045, Block 2046, Block 2048, Block 2995, Block 2996, Block 2997, Block 2998, Block 2999; Tract 9804: Block Group 2: Block 2016, Block 2017, Block 2018; Block Group 5: Block 5070, Block 5071, Block 5072, Block 5075, Block 5076, Block 5077; Tract 9806: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2024, Block 2025, Block 2026, Block 2027, Block 2028, Block 2029, Block 2036, Block 2037, Block 2044, Block 2045, Block 2046, Block 2047, Block 2048, Block 2049, Block 2050, Block 2051, Block 2052; Precinct Scotts Hill, Precinct Surf City, Precinct Topsail Lower, Precinct Topsail Upper.~~ New Hanover County: Precinct Harnett 2 & 8, Precinct Harnett 5, Precinct Harnett 6, Precinct Harnett 7, Precinct Harnett 9; Pender County.

...

District 18: ~~New Hanover County: Precinct Cape Fear 1, Precinct Cape Fear 2: Tract 115 Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1008, Block 1009, Block 1010, Block 1011, Block 1012, Block 1013, Block 1014, Block 1015, Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025, Block 1026, Block 1027, Block 1028, Block 1029, Block 1030, Block 1031, Block 1032, Block 1033, Block 1034, Block 1035, Block 1036, Block 1037, Block 1038, Block 1039, Block 1040, Block 1041, Block 1042, Block 1043, Block 1044, Block 1045, Block 1046, Block 1047, Block 1048, Block 1049, Block 1050, Block 1051, Block 1052, Block 1059, Block 1992, Block 1993, Block 1994, Block 1997, Block 1998, Block 1999; Block Group 2: Block 2000, Block 2001, Block 2002; Block Group 5: Block 5984, Block 5985; Tract 116.03: Block Group 1, Block Group 2: Block 2000, Block 2001; Tract 116.04: Block Group 1: Block 1002, Block 1003; Precinct Cape Fear 3: Tract 103: Block Group 2: Block 2002; Tract 114: Block Group 1: Block 1000; Tract 116.03: Block Group 2: Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2016, Block 2021; Block Group 3: Block 3000, Block 3001, Block 3002, Block 3003, Block 3004, Block 3005, Block 3006, Block 3007, Block 3009, Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025; Tract 116.04: Block Group 3: Block 3027, Block 3028; Precinct Harnett 7: Tract 116.04: Block Group 3: Block 3011, Block 3012, Block 3013, Block 3014, Block 3015, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026; Precinct Wilmington 01, Precinct Wilmington 02, Precinct Wilmington 03, Precinct Wilmington 06, Precinct Wilmington 07, Precinct Wilmington 08, Precinct Wilmington 09, Precinct Wilmington 10, Precinct Wilmington 12: Tract 104: Block Group 1: Block 1000; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2013, Block 2014, Block 2015, Block 2016, Block 2017, Block 2018; Precinct Wilmington 13: Tract 105.01: Block Group 1: Block 1000, Block 1001, Block 1002, Block 1003, Block 1004, Block 1013, Block 1014, Block 1015,~~

~~Block 1016, Block 1017, Block 1018, Block 1019, Block 1020, Block 1021, Block 1022, Block 1023, Block 1024, Block 1025; Block Group 2: Block 2000, Block 2001, Block 2002, Block 2003, Block 2004; Precinct Wilmington 15; Pender County: Precinct Burgaw North, Precinct Burgaw South: Tract 9804: Block Group 1: Block 1001, Block 1002, Block 1003, Block 1004, Block 1005, Block 1006, Block 1007, Block 1017, Block 1018, Block 1020; Block Group 2: Block 2001, Block 2002, Block 2003, Block 2004, Block 2005, Block 2006, Block 2007, Block 2008, Block 2009, Block 2010, Block 2011, Block 2012, Block 2013, Block 2014, Block 2015, Block 2019, Block 2020, Block 2021, Block 2022, Block 2023, Block 2028; Block Group 3: Block 3015, Block 3016, Block 3017, Block 3018, Block 3019, Block 3020, Block 3021, Block 3022, Block 3023, Block 3024, Block 3025, Block 3026, Block 3027, Block 3028, Block 3029, Block 3030, Block 3031, Block 3032, Block 3033, Block 3034, Block 3035, Block 3036, Block 3037, Block 3038, Block 3055, Block 3056, Block 3057, Block 3058, Block 3059, Block 3060, Block 3061, Block 3062, Block 3063, Block 3064, Block 3065, Block 3066, Block 3067, Block 3068; Block Group 4: Block 4058, Block 4059, Block 4060, Block 4061, Block 4062, Block 4063, Block 4064, Block 4065, Block 4066, Block 4067, Block 4999; Block Group 5: Block 5000, Block 5001, Block 5002, Block 5003, Block 5004, Block 5005, Block 5006, Block 5007, Block 5008, Block 5009, Block 5010, Block 5011, Block 5012, Block 5013, Block 5014, Block 5015, Block 5016, Block 5017, Block 5018, Block 5019, Block 5020, Block 5021, Block 5022, Block 5023, Block 5024, Block 5025, Block 5026, Block 5027, Block 5028, Block 5029, Block 5030, Block 5031, Block 5032, Block 5033, Block 5034, Block 5035, Block 5036, Block 5037, Block 5038, Block 5039, Block 5040, Block 5041, Block 5042, Block 5043, Block 5044, Block 5045, Block 5046, Block 5047, Block 5048, Block 5049, Block 5050, Block 5051, Block 5052, Block 5053, Block 5054, Block 5055, Block 5056, Block 5057, Block 5058, Block 5059, Block 5060, Block 5061, Block 5073, Block 5074; Tract 9806: Block Group 3: Block 3009; Precinct Canetuck, Precinct Caswell, Precinct Columbia, Precinct Grady, Precinct Holly Middle, Precinct Holly Upper, Precinct Long Creek, Precinct Penderlea, Precinct Rocky Point: Tract 9806: Block Group 1: Block 1996, Block 1997; Block Group 2: Block 2030, Block 2031, Block 2032, Block 2033, Block 2034, Block 2038, Block 2039, Block 2040, Block 2041, Block 2042, Block 2043, Block 2999; Block Group 3: Block 3030, Block 3032, Block 3033; Precinct Union Lower, Precinct Union Upper.~~ New Hanover County: Precinct Cape Fear 1, Precinct Cape Fear 2, Precinct Cape Fear 3, Precinct Harnett 1, Precinct Harnett 4, Precinct Wilmington 01, Precinct Wilmington 02, Precinct Wilmington 03, Precinct Wilmington 06, Precinct Wilmington 07, Precinct Wilmington 08, Precinct Wilmington 09, Precinct Wilmington 10, Precinct Wilmington 12, Precinct Wilmington 13, Precinct Wilmington 15, Precinct Wilmington 18, Precinct Wilmington 22, Precinct Wilmington 23, Precinct Wilmington 24."

SECTION 2. This act is effective when it becomes law and applies to elections held on or after January 1, 2010.

House Redistricting Plan - Ideal versus Actual Populations based on 2000 Census Results ~~Attachment IV~~ HB 1621

Pender/New Hanover House Districts

District	2000 Pop	Ideal Pop	Ideal +/-	% +/-
1	64,121	67,078	-2,957	-4.41%
2	64,042	67,078	-3,036	-4.53%
3	64,028	67,078	-3,050	-4.55%
4	63,948	67,078	-3,130	-4.67%
5	64,258	67,078	-2,820	-4.20%
6	70,385	67,078	3,307	4.93%
7	63,774	67,078	-3,304	-4.93%
8	66,579	67,078	-499	-0.74%
9	67,385	67,078	307	0.46%
10	69,140	67,078	2,062	3.07%
11	70,380	67,078	3,302	4.92%
12	63,733	67,078	-3,345	-4.99%
13	69,764	67,078	2,686	4.00%
14	67,606	67,078	528	0.79%
15	67,864	67,078	786	1.17%
16	68,294	67,078	1,216	1.81%
17	64,137	67,078	-2,941	-4.38%
18	63,772	67,078	-3,306	-4.93%
19	69,323	67,078	2,245	3.35%
20	63,755	67,078	-3,323	-4.95%
21	70,394	67,078	3,316	4.94%
22	70,244	67,078	3,166	4.72%
23	64,905	67,078	-2,173	-3.24%
24	64,515	67,078	-2,563	-3.82%
25	63,760	67,078	-3,318	-4.95%
26	70,406	67,078	3,328	4.96%
27	66,874	67,078	-204	-0.30%
28	70,366	67,078	3,288	4.90%
29	64,967	67,078	-2,111	-3.15%
30	64,523	67,078	-2,555	-3.81%
31	64,023	67,078	-3,055	-4.55%
32	66,636	67,078	-442	-0.66%
33	70,241	67,078	3,163	4.72%
34	69,700	67,078	2,622	3.91%
35	70,387	67,078	3,309	4.93%
36	70,367	67,078	3,289	4.90%
37	70,398	67,078	3,320	4.95%
38	70,398	67,078	3,320	4.95%
39	69,628	67,078	2,550	3.80%
40	69,841	67,078	2,763	4.12%
41	66,886	67,078	-192	-0.29%
42	63,745	67,078	-3,333	-4.97%
43	63,986	67,078	-3,092	-4.61%
44	66,909	67,078	-169	-0.25%
45	70,357	67,078	3,279	4.89%
46	63,889	67,078	-3,189	-4.75%
47	65,255	67,078	-1,823	-2.72%
48	63,839	67,078	-3,239	-4.83%
49	64,516	67,078	-2,562	-3.82%
50	64,508	67,078	-2,570	-3.83%
51	70,140	67,078	3,062	4.56%

House Redistricting Plan - Ideal versus Actual Populations based on 2000 Census Results

District	2000 Pop	Ideal Pop	Ideal +/-	% +/-
52	70,238	67,078	3,160	4.71%
53	69,925	67,078	2,847	4.24%
54	67,257	67,078	179	0.27%
55	65,424	67,078	-1,654	-2.47%
56	63,823	67,078	-3,255	-4.85%
57	70,423	67,078	3,345	4.99%
58	70,419	67,078	3,341	4.98%
59	69,971	67,078	2,893	4.31%
60	69,418	67,078	2,340	3.49%
61	70,408	67,078	3,330	4.96%
62	70,409	67,078	3,331	4.97%
63	65,174	67,078	-1,904	-2.84%
64	65,626	67,078	-1,452	-2.16%
65	66,769	67,078	-309	-0.46%
66	70,430	67,078	3,352	5.00%
67	69,458	67,078	2,380	3.55%
68	70,389	67,078	3,311	4.94%
69	70,161	67,078	3,083	4.60%
70	65,840	67,078	-1,238	-1.85%
71	63,731	67,078	-3,347	-4.99%
72	63,731	67,078	-3,347	-4.99%
73	63,813	67,078	-3,265	-4.87%
74	63,762	67,078	-3,316	-4.94%
75	63,902	67,078	-3,176	-4.73%
76	66,034	67,078	-1,044	-1.56%
77	64,306	67,078	-2,772	-4.13%
78	64,614	67,078	-2,464	-3.67%
79	63,782	67,078	-3,296	-4.91%
80	70,245	67,078	3,167	4.72%
81	64,129	67,078	-2,949	-4.40%
82	65,483	67,078	-1,595	-2.38%
83	65,580	67,078	-1,498	-2.23%
84	63,728	67,078	-3,350	-4.99%
85	67,428	67,078	350	0.52%
86	63,871	67,078	-3,207	-4.78%
87	63,739	67,078	-3,339	-4.98%
88	64,534	67,078	-2,544	-3.79%
89	63,865	67,078	-3,213	-4.79%
90	63,751	67,078	-3,327	-4.96%
91	69,870	67,078	2,792	4.16%
92	63,848	67,078	-3,230	-4.82%
93	67,079	67,078	1	0.00%
94	65,632	67,078	-1,446	-2.16%
95	66,249	67,078	-829	-1.24%
96	64,998	67,078	-2,080	-3.10%
97	63,780	67,078	-3,298	-4.92%
98	70,355	67,078	3,277	4.89%
99	69,971	67,078	2,893	4.31%
100	70,380	67,078	3,302	4.92%
101	66,901	67,078	-177	-0.26%
102	69,833	67,078	2,755	4.11%

House Redistricting Plan - Ideal versus Actual Populations based on 2000 Census Results

District	2000 Pop	Ideal Pop	Ideal +/-	% +/-
103	70,308	67,078	3,230	4.82%
104	70,400	67,078	3,322	4.95%
105	70,393	67,078	3,315	4.94%
106	69,114	67,078	2,036	3.04%
107	67,799	67,078	721	1.07%
108	70,419	67,078	3,341	4.98%
109	70,412	67,078	3,334	4.97%
110	70,421	67,078	3,343	4.98%
111	67,909	67,078	831	1.24%
112	70,390	67,078	3,312	4.94%
113	66,543	67,078	-535	-0.80%
114	66,764	67,078	-314	-0.47%
115	70,295	67,078	3,217	4.80%
116	69,271	67,078	2,193	3.27%
117	70,288	67,078	3,210	4.79%
118	63,734	67,078	-3,344	-4.99%
119	63,728	67,078	-3,350	-4.99%
120	63,748	67,078	-3,330	-4.96%

Data Source: 2000 Census

House Redistricting Plan - Total Population by Race and Ethnicity

		Race																Ethnicity	
District	Total	White	%White	Black	%Black	MR Black	%MR Black	Total Black	%Total Black	AI	%AI	A/PI	%A/PI	Other	%Other	MR	%MR	Hisp	%Hisp
1	64,121	44,205	68.94%	18,118	28.26%	276	0.43%	18,394	28.69%	250	0.39%	462	0.72%	357	0.56%	729	1.14%	889	1.39%
2	64,042	47,463	74.11%	15,006	23.43%	200	0.31%	15,206	23.74%	151	0.24%	246	0.38%	633	0.99%	543	0.85%	1,327	2.07%
3	64,028	51,608	80.60%	9,830	15.35%	294	0.46%	10,124	15.81%	290	0.45%	656	1.02%	762	1.19%	882	1.38%	1,880	2.94%
4	63,948	40,743	63.71%	16,366	25.59%	276	0.43%	16,642	26.02%	195	0.30%	207	0.32%	5,606	8.77%	831	1.30%	8,035	12.56%
5	64,258	29,906	46.54%	33,087	51.49%	245	0.38%	33,332	51.87%	420	0.65%	154	0.24%	238	0.37%	453	0.70%	698	1.09%
6	70,385	49,377	70.15%	18,780	26.68%	242	0.34%	19,022	27.03%	128	0.18%	389	0.55%	1,150	1.63%	561	0.80%	2,287	3.25%
7	63,774	24,011	37.65%	37,823	59.31%	296	0.46%	38,119	59.77%	388	0.61%	448	0.70%	548	0.86%	556	0.87%	1,054	1.65%
8	66,579	28,698	43.10%	35,583	53.44%	352	0.53%	35,935	53.97%	162	0.24%	319	0.48%	1,189	1.79%	628	0.94%	2,225	3.34%
9	67,385	49,201	73.01%	15,318	22.73%	264	0.39%	15,582	23.12%	215	0.32%	970	1.44%	938	1.39%	743	1.10%	1,687	2.50%
10	69,140	45,638	66.01%	18,969	27.44%	203	0.29%	19,172	27.73%	173	0.25%	266	0.38%	3,521	5.09%	573	0.83%	5,036	7.28%
11	70,380	52,063	73.97%	15,066	21.41%	366	0.52%	15,432	21.93%	277	0.39%	871	1.24%	1,243	1.77%	860	1.22%	2,394	3.40%
12	63,733	28,918	45.37%	32,051	50.29%	442	0.69%	32,493	50.98%	206	0.32%	453	0.71%	1,202	1.89%	903	1.42%	2,424	3.80%
13	69,764	59,940	85.92%	7,875	11.29%	235	0.34%	8,110	11.62%	295	0.42%	378	0.54%	533	0.76%	743	1.07%	1,317	1.89%
14	67,606	45,898	67.89%	15,316	22.65%	947	1.40%	16,263	24.06%	441	0.65%	1,659	2.45%	1,875	2.77%	2,417	3.58%	4,333	6.41%
15	67,864	50,495	74.41%	10,306	15.19%	838	1.23%	11,144	16.42%	585	0.86%	1,054	1.55%	3,302	4.87%	2,122	3.13%	5,954	8.77%
16	68,294	60,552	88.66%	5,683	8.32%	208	0.30%	5,891	8.63%	270	0.40%	548	0.80%	601	0.88%	640	0.94%	1,446	2.12%
17	64,137	54,026	84.24%	8,022	12.51%	221	0.34%	8,243	12.85%	443	0.69%	210	0.33%	770	1.20%	666	1.04%	1,497	2.33%
18	63,772	34,457	54.03%	27,023	42.37%	329	0.52%	27,352	42.89%	291	0.46%	263	0.41%	1,011	1.59%	727	1.14%	2,067	3.24%
19	69,323	62,971	90.84%	4,186	6.04%	201	0.29%	4,387	6.33%	267	0.39%	706	1.02%	488	0.70%	705	1.02%	1,259	1.82%
20	63,755	40,911	64.17%	19,428	30.47%	252	0.40%	19,680	30.87%	1,757	2.76%	159	0.25%	1,007	1.58%	493	0.77%	1,732	2.72%
21	70,394	29,181	41.45%	35,244	50.07%	405	0.58%	35,649	50.64%	857	1.22%	342	0.49%	3,888	5.52%	882	1.25%	5,903	8.39%
22	70,244	46,266	65.86%	19,517	27.78%	370	0.53%	19,887	28.31%	1,794	2.55%	407	0.58%	1,207	1.72%	1,053	1.50%	2,627	3.74%
23	64,905	39,137	60.30%	23,524	36.24%	190	0.29%	23,714	36.54%	139	0.21%	156	0.24%	1,485	2.29%	464	0.71%	2,609	4.02%
24	64,515	24,351	37.74%	37,457	58.06%	263	0.41%	37,720	58.47%	169	0.26%	247	0.38%	1,752	2.72%	539	0.84%	3,402	5.27%
25	63,760	44,071	69.12%	17,169	26.93%	214	0.34%	17,383	27.26%	261	0.41%	269	0.42%	1,437	2.25%	553	0.87%	2,284	3.58%
26	70,406	51,800	73.57%	14,028	19.92%	233	0.33%	14,261	20.26%	253	0.36%	295	0.42%	3,268	4.64%	762	1.08%	5,974	8.49%
27	66,874	27,208	40.69%	37,140	55.54%	299	0.45%	37,439	55.98%	1,075	1.61%	199	0.30%	747	1.12%	505	0.76%	1,459	2.18%
28	70,366	58,372	82.95%	7,421	10.55%	192	0.27%	7,613	10.82%	555	0.79%	178	0.25%	3,225	4.58%	615	0.87%	5,160	7.33%
29	64,967	28,908	44.50%	30,415	46.82%	558	0.86%	30,973	47.67%	180	0.28%	2,224	3.42%	2,057	3.17%	1,183	1.82%	4,107	6.32%
30	64,523	41,898	64.93%	14,607	22.64%	459	0.71%	15,066	23.35%	164	0.25%	3,158	4.89%	3,360	5.21%	1,336	2.07%	5,739	8.89%
31	64,023	27,124	42.37%	30,777	48.07%	444	0.69%	31,221	48.77%	238	0.37%	1,689	2.64%	3,146	4.91%	1,049	1.64%	5,661	8.84%
32	66,636	39,362	59.07%	24,559	36.86%	334	0.50%	24,893	37.36%	260	0.39%	229	0.34%	1,544	2.32%	682	1.02%	2,927	4.39%
33	70,241	26,692	38.00%	36,338	51.73%	784	1.12%	37,122	52.85%	251	0.36%	1,936	2.76%	3,425	4.88%	1,599	2.28%	6,657	9.48%
34	69,700	54,946	78.83%	9,532	13.68%	433	0.62%	9,965	14.30%	184	0.26%	2,037	2.92%	1,851	2.66%	1,150	1.65%	4,675	6.71%
35	70,387	54,402	77.29%	7,694	10.93%	391	0.56%	8,085	11.49%	278	0.39%	4,428	6.29%	2,187	3.11%	1,398	1.99%	4,846	6.88%
36	70,367	60,813	86.42%	3,776	5.37%	305	0.43%	4,081	5.80%	189	0.27%	3,631	5.16%	755	1.07%	1,203	1.71%	2,430	3.45%
37	70,398	56,030	79.59%	10,568	15.01%	308	0.44%	10,876	15.45%	318	0.45%	1,078	1.53%	1,428	2.03%	976	1.39%	3,234	4.59%
38	70,398	40,810	57.97%	24,177	34.34%	537	0.76%	24,714	35.11%	363	0.52%	1,445	2.05%	2,430	3.45%	1,173	1.67%	4,366	6.20%
39	69,628	45,016	64.65%	20,187	28.99%	488	0.70%	20,675	29.69%	264	0.38%	814	1.17%	2,254	3.24%	1,093	1.57%	4,098	5.89%
40	69,841	60,900	87.20%	5,989	8.58%	202	0.29%	6,191	8.86%	143	0.20%	1,527	2.19%	570	0.82%	712	1.02%	1,470	2.10%
41	66,886	54,935	82.13%	5,559	8.31%	261	0.39%	5,820	8.70%	162	0.24%	4,565	6.83%	648	0.97%	1,017	1.52%	2,209	3.30%
42	63,745	26,731	41.93%	28,793	45.17%	1,418	2.22%	30,211	47.39%	569	0.89%	1,861	2.92%	2,968	4.66%	2,823	4.43%	6,318	9.91%
43	63,986	25,740	40.23%	31,999	50.01%	965	1.51%	32,964	51.52%	547	0.85%	1,311	2.05%	2,465	3.85%	1,924	3.01%	5,195	8.12%
44	66,909	40,100	59.93%	19,520	29.17%	1,026	1.53%	20,546	30.71%	838	1.25%	2,114	3.16%	2,093	3.13%	2,244	3.35%	4,978	7.44%
45	70,357	46,725	66.41%	18,137	25.78%	643	0.91%	18,780	26.69%	1,600	2.27%	948	1.35%	1,380	1.96%	1,567	2.23%	2,999	4.26%
46	63,889	38,354	60.03%	16,083	25.17%	360	0.56%	16,443	25.74%	6,360	9.95%	446	0.70%	1,480	2.32%	1,166	1.83%	3,021	4.73%
47	65,255	16,463	25.23%	10,547	16.16%	191	0.29%	10,738	16.46%	35,357	54.18%	313	0.48%	1,607	2.46%	968	1.48%	3,831	5.87%
48	63,839	19,160	30.01%	30,441	47.68%	290	0.45%	30,731	48.14%	12,228	19.15%	241	0.38%	964	1.51%	805	1.26%	1,980	3.10%
49	64,516	41,684	64.61%	19,016	29.47%	272	0.42%	19,288	29.90%	1,757	2.72%	277	0.43%	1,168	1.81%	614	0.95%	2,280	3.53%
50	64,508	46,483	72.06%	15,799	24.49%	314	0.49%	16,113	24.98%	215	0.33%	297	0.46%	944	1.46%	770	1.19%	1,761	2.73%
51	70,140	49,817	71.03%	14,202	20.25%	323	0.46%	14,525	20.71%	350	0.50%	533	0.76%	4,280	6.10%	958	1.37%	6,926	9.87%
52	70,238	56,310	80.17%	10,948	15.59%	230	0.33%	11,178	15.91%	467	0.66%	358	0.51%	1,543	2.20%	612	0.87%	2,806	3.99%
53	69,925	49,270	70.46%	16,311	23.33%	414	0.59%	16,725	23.92%	650	0.93%	466	0.67%	2,237	3.20%	991	1.42%	4,125	5.90%

A=Asian AI=American Indian and Alaskan Native PI=Native Hawaiia er Pacific Islander
MR=Multi-Race Hisp=Hisp atino (of any race)

Data Source: 2000 Census

House Redistricting Plan - Tc opulation by Race and Ethnicity

		Race																Ethnicity	
District	Total	White	%White	Black	%Black	MR Black	%MR Black	Total Black	%Total Black	AI	%AI	A/PI	%A/PI	Other	%Other	MR	%MR	Hisp	%Hisp
54	67,257	51,851	77.09%	10,483	15.59%	290	0.43%	10,773	16.02%	264	0.39%	772	1.15%	3,084	4.59%	803	1.19%	5,283	7.85%
55	65,424	40,272	61.56%	22,359	34.18%	388	0.59%	22,747	34.77%	296	0.45%	416	0.64%	1,328	2.03%	753	1.15%	2,278	3.48%
56	63,823	48,951	76.70%	7,662	12.01%	442	0.69%	8,104	12.70%	263	0.41%	4,160	6.52%	1,527	2.39%	1,260	1.97%	3,562	5.58%
57	70,423	47,479	67.42%	15,432	21.91%	651	0.92%	16,083	22.84%	320	0.45%	3,533	5.02%	2,042	2.90%	1,617	2.30%	4,285	6.08%
58	70,419	29,940	42.52%	37,870	53.78%	499	0.71%	38,369	54.49%	310	0.44%	412	0.59%	1,060	1.51%	827	1.17%	1,878	2.67%
59	69,971	48,675	69.56%	17,516	25.03%	491	0.70%	18,007	25.73%	293	0.42%	1,243	1.78%	1,300	1.86%	944	1.35%	2,656	3.80%
60	69,418	27,450	39.54%	37,283	53.71%	580	0.84%	37,863	54.54%	523	0.75%	1,590	2.29%	1,431	2.06%	1,141	1.64%	2,816	4.06%
61	70,408	56,224	79.85%	9,160	13.01%	278	0.39%	9,438	13.40%	303	0.43%	2,452	3.48%	1,331	1.89%	938	1.33%	3,035	4.31%
62	70,409	61,918	87.94%	5,992	8.51%	212	0.30%	6,204	8.81%	195	0.28%	1,194	1.70%	451	0.64%	659	0.94%	1,315	1.87%
63	65,174	40,996	62.90%	18,994	29.14%	379	0.58%	19,373	29.73%	284	0.44%	719	1.10%	3,243	4.98%	938	1.44%	6,634	10.18%
64	65,626	57,904	88.23%	5,550	8.46%	203	0.31%	5,753	8.77%	178	0.27%	481	0.73%	934	1.42%	579	0.88%	2,201	3.35%
65	66,769	49,148	73.61%	15,495	23.21%	250	0.37%	15,745	23.58%	158	0.24%	236	0.35%	1,160	1.74%	572	0.86%	2,142	3.21%
66	70,430	45,894	65.16%	20,047	28.46%	262	0.37%	20,309	28.84%	869	1.23%	720	1.02%	2,034	2.89%	866	1.23%	4,088	5.80%
67	69,458	60,089	86.51%	6,884	9.91%	168	0.24%	7,052	10.15%	168	0.24%	1,141	1.64%	647	0.93%	529	0.76%	1,372	1.98%
68	70,389	63,892	90.77%	4,339	6.16%	187	0.27%	4,526	6.43%	263	0.37%	576	0.82%	650	0.92%	669	0.95%	1,547	2.20%
69	70,161	43,001	61.29%	23,234	33.12%	207	0.30%	23,441	33.41%	310	0.44%	296	0.42%	2,645	3.77%	675	0.96%	6,194	8.83%
70	65,840	57,329	87.07%	4,932	7.49%	226	0.34%	5,158	7.83%	295	0.45%	452	0.69%	2,080	3.16%	752	1.14%	4,979	7.56%
71	63,731	22,685	35.59%	34,099	53.50%	819	1.29%	34,918	54.79%	259	0.41%	444	0.70%	4,869	7.64%	1,375	2.16%	9,016	14.15%
72	63,731	29,947	46.99%	29,707	46.61%	456	0.72%	30,163	47.33%	208	0.33%	525	0.82%	2,457	3.86%	887	1.39%	5,347	8.39%
73	63,813	57,463	90.05%	3,762	5.90%	158	0.25%	3,920	6.14%	229	0.36%	531	0.83%	1,287	2.02%	541	0.85%	2,265	3.55%
74	63,762	56,312	88.32%	5,369	8.42%	205	0.32%	5,574	8.74%	149	0.23%	724	1.14%	615	0.96%	593	0.93%	1,320	2.07%
75	63,902	55,498	86.85%	5,722	8.95%	240	0.38%	5,962	9.33%	130	0.20%	1,090	1.71%	788	1.23%	674	1.05%	1,793	2.81%
76	66,034	59,768	90.51%	3,835	5.81%	114	0.17%	3,949	5.98%	220	0.33%	458	0.69%	1,234	1.87%	519	0.79%	2,631	3.98%
77	64,306	44,526	69.24%	16,727	26.01%	314	0.49%	17,041	26.50%	213	0.33%	682	1.06%	1,376	2.14%	782	1.22%	2,738	4.26%
78	64,614	59,041	91.37%	2,410	3.73%	182	0.28%	2,592	4.01%	287	0.44%	399	0.62%	1,852	2.87%	625	0.97%	3,667	5.68%
79	63,782	53,335	83.62%	7,979	12.51%	273	0.43%	8,252	12.94%	149	0.23%	632	0.99%	1,044	1.64%	643	1.01%	2,605	4.08%
80	70,245	66,461	94.61%	2,474	3.52%	79	0.11%	2,553	3.63%	213	0.30%	268	0.38%	388	0.55%	441	0.63%	982	1.40%
81	64,129	49,370	76.99%	10,718	16.71%	281	0.44%	10,999	17.15%	280	0.44%	908	1.42%	2,004	3.12%	849	1.32%	3,619	5.64%
82	65,483	52,911	80.80%	8,994	13.73%	233	0.36%	9,227	14.09%	198	0.30%	764	1.17%	1,912	2.92%	704	1.08%	4,461	6.81%
83	65,580	56,216	85.72%	6,967	10.62%	187	0.29%	7,154	10.91%	245	0.37%	458	0.70%	1,105	1.68%	589	0.90%	2,159	3.29%
84	63,728	60,404	94.78%	1,940	3.04%	99	0.16%	2,039	3.20%	213	0.33%	128	0.20%	624	0.98%	419	0.66%	1,526	2.39%
85	67,428	61,733	91.55%	2,664	3.95%	117	0.17%	2,781	4.12%	199	0.30%	1,463	2.17%	819	1.21%	550	0.82%	1,472	2.18%
86	63,871	53,798	84.23%	5,073	7.94%	222	0.35%	5,295	8.29%	193	0.30%	2,221	3.48%	1,790	2.80%	796	1.25%	2,922	4.57%
87	63,739	58,938	92.47%	3,016	4.73%	126	0.20%	3,142	4.93%	137	0.21%	294	0.46%	870	1.36%	484	0.76%	1,601	2.51%
88	64,534	54,673	84.72%	6,203	9.61%	248	0.38%	6,451	10.00%	106	0.16%	1,338	2.07%	1,478	2.29%	736	1.14%	3,266	5.06%
89	63,865	56,761	88.88%	4,228	6.62%	168	0.26%	4,396	6.88%	171	0.27%	1,138	1.78%	1,012	1.58%	555	0.87%	2,068	3.24%
90	63,751	57,554	90.28%	2,594	4.07%	131	0.21%	2,725	4.27%	147	0.23%	412	0.65%	2,264	3.55%	780	1.22%	4,518	7.09%
91	69,870	63,713	91.19%	4,576	6.55%	133	0.19%	4,709	6.74%	201	0.29%	160	0.23%	783	1.12%	437	0.63%	1,519	2.17%
92	63,848	59,431	93.08%	2,103	3.29%	98	0.15%	2,201	3.45%	115	0.18%	136	0.21%	1,596	2.50%	467	0.73%	3,270	5.12%
93	67,079	64,872	96.71%	842	1.26%	89	0.13%	931	1.39%	187	0.28%	326	0.49%	451	0.67%	401	0.60%	1,212	1.81%
94	65,632	61,008	92.95%	2,733	4.16%	152	0.23%	2,885	4.40%	95	0.14%	238	0.36%	1,124	1.71%	434	0.66%	2,262	3.45%
95	66,249	54,062	81.60%	9,597	14.49%	254	0.38%	9,851	14.87%	199	0.30%	825	1.25%	962	1.45%	604	0.91%	1,920	2.90%
96	64,998	56,048	86.23%	4,187	6.44%	215	0.33%	4,402	6.77%	187	0.29%	2,304	3.54%	1,512	2.33%	760	1.17%	3,978	6.12%
97	63,780	57,557	90.24%	4,108	6.44%	157	0.25%	4,265	6.69%	172	0.27%	204	0.32%	1,104	1.73%	635	1.00%	3,656	5.73%
98	70,355	60,355	85.79%	7,036	10.00%	215	0.31%	7,251	10.31%	157	0.22%	1,604	2.28%	533	0.76%	670	0.95%	1,887	2.68%
99	69,971	41,377	59.13%	21,139	30.21%	557	0.80%	21,696	31.01%	282	0.40%	3,661	5.23%	2,210	3.16%	1,302	1.86%	4,293	6.14%
100	70,380	38,826	55.17%	23,337	33.16%	669	0.95%	24,006	34.11%	281	0.40%	2,666	3.79%	3,627	5.15%	1,643	2.33%	8,303	11.80%
101	66,901	27,212	40.68%	35,283	52.74%	439	0.66%	35,722	53.40%	206	0.31%	1,737	2.60%	1,613	2.41%	850	1.27%	3,378	5.05%
102	69,833	25,496	36.51%	35,054	50.20%	589	0.84%	35,643	51.04%	308	0.44%	1,976	2.83%	5,676	8.13%	1,323	1.89%	8,643	12.38%
103	70,308	56,430	80.26%	9,910	14.10%	267	0.38%	10,177	14.47%	328	0.47%	1,625	2.31%	1,097	1.56%	918	1.31%	2,827	4.02%
104	70,400	63,933	90.81%	3,261	4.63%	143	0.20%	3,404	4.84%	91	0.13%	2,017	2.87%	477	0.68%	621	0.88%	1,743	2.48%
105	70,393	63,229	89.82%	3,160	4.49%	200	0.28%	3,360	4.77%	126	0.18%	2,620	3.72%	483	0.69%	775	1.10%	1,933	2.75%
106	69,114	41,734	60.38%	19,443	28.13%	429	0.62%	19,872	28.75%	355	0.51%	2,175	3.15%	3,778	5.47%	1,629	2.36%	8,484	12.28%

A=Asian AI=American Indian and Alaskan Native PI=Native Hawaiian and other Pacific Islander
MR=Multi-Race Hisp=Hispanic or Latino (of any race)

Data Source: 2000 Census

House Redistricting Plan - Total Population by Race and Ethnicity

		Race																Ethnicity	
District	Total	White	%White	Black	%Black	MR Black	%MR Black	Total Black	%Total Black	AI	%AI	A/PI	%A/PI	Other	%Other	MR	%MR	Hisp	%Hisp
107	67,799	26,658	39.32%	36,215	53.42%	442	0.65%	36,657	54.07%	305	0.45%	2,147	3.17%	1,460	2.15%	1,014	1.50%	3,380	4.99%
108	70,419	61,448	87.26%	6,071	8.62%	183	0.26%	6,254	8.88%	194	0.28%	1,157	1.64%	932	1.32%	617	0.88%	2,218	3.15%
109	70,412	52,855	75.07%	15,410	21.89%	285	0.40%	15,695	22.29%	184	0.26%	543	0.77%	736	1.05%	684	0.97%	2,518	3.58%
110	70,421	61,447	87.26%	7,671	10.89%	158	0.22%	7,829	11.12%	174	0.25%	212	0.30%	452	0.64%	465	0.66%	1,349	1.92%
111	67,909	50,088	73.76%	16,175	23.82%	235	0.35%	16,410	24.16%	112	0.16%	606	0.89%	380	0.56%	548	0.81%	893	1.31%
112	70,390	60,674	86.20%	8,299	11.79%	201	0.29%	8,500	12.08%	131	0.19%	251	0.36%	538	0.76%	497	0.71%	1,310	1.86%
113	66,543	62,340	93.68%	2,546	3.83%	229	0.34%	2,775	4.17%	161	0.24%	218	0.33%	661	0.99%	617	0.93%	1,719	2.58%
114	66,764	58,443	87.54%	5,918	8.86%	239	0.36%	6,157	9.22%	291	0.44%	435	0.65%	818	1.23%	859	1.29%	2,022	3.03%
115	70,295	60,412	85.94%	7,500	10.67%	330	0.47%	7,830	11.14%	269	0.38%	538	0.77%	669	0.95%	907	1.29%	1,702	2.42%
116	69,271	64,906	93.70%	2,007	2.90%	234	0.34%	2,241	3.24%	243	0.35%	474	0.68%	878	1.27%	763	1.10%	2,006	2.90%
117	70,288	64,547	91.83%	2,493	3.55%	198	0.28%	2,691	3.83%	201	0.29%	511	0.73%	1,784	2.54%	752	1.07%	4,010	5.71%
118	63,734	61,785	96.94%	825	1.29%	56	0.09%	881	1.38%	253	0.40%	158	0.25%	296	0.46%	417	0.65%	904	1.42%
119	63,728	54,239	85.11%	838	1.31%	80	0.13%	918	1.44%	7,241	11.36%	248	0.39%	286	0.45%	876	1.37%	958	1.50%
120	63,748	60,984	95.66%	785	1.23%	94	0.15%	879	1.38%	1,025	1.61%	193	0.30%	211	0.33%	550	0.86%	827	1.30%
Statewide	8,049,313	5,804,656	72.11%	1,737,545	21.59%	38,738	0.48%	1,776,283	22.07%	99,551	1.24%	117,672	1.46%	186,629	2.32%	103,260	1.28%	378,963	4.71%

A=Asian AI=American Indian and Alaskan Native PI=Native Hawaiia ier Pacific Islander
MR=Multi-Race Hisp=Hisp atino (of any race)

Data Source: 2000 Census

House Redistricting Plan - Votin e Population by Race and Ethnicity

		Race																Ethnicity	
District	Total	White	%White	Black	%Black	MR Black	%MR Black	Total Black	%Total Black	AI	%AI	A/PI	%A/PI	Other	%Other	MR	%MR	Hisp	%Hisp
1	48,206	33,866	70.25%	13,152	27.28%	102	0.21%	13,254	27.49%	190	0.39%	355	0.74%	245	0.51%	398	0.83%	595	1.23%
2	49,402	37,809	76.53%	10,533	21.32%	67	0.14%	10,600	21.46%	124	0.25%	190	0.38%	431	0.87%	315	0.64%	908	1.84%
3	48,921	40,126	82.02%	7,124	14.56%	103	0.21%	7,227	14.77%	205	0.42%	518	1.06%	509	1.04%	439	0.90%	1,206	2.47%
4	47,127	31,100	65.99%	11,599	24.61%	119	0.25%	11,718	24.86%	139	0.29%	164	0.35%	3,692	7.83%	433	0.92%	5,213	11.06%
5	47,959	23,712	49.44%	23,387	48.76%	124	0.26%	23,511	49.02%	319	0.67%	122	0.25%	160	0.33%	259	0.54%	474	0.99%
6	54,113	39,574	73.13%	13,035	24.09%	100	0.18%	13,135	24.27%	102	0.19%	320	0.59%	772	1.43%	310	0.57%	1,494	2.76%
7	46,872	19,468	41.53%	26,099	55.68%	165	0.35%	26,264	56.03%	282	0.60%	323	0.69%	371	0.79%	329	0.70%	737	1.57%
8	48,879	22,929	46.91%	24,454	50.03%	160	0.33%	24,614	50.36%	126	0.26%	249	0.51%	788	1.61%	333	0.68%	1,445	2.96%
9	52,748	39,679	75.22%	11,043	20.94%	127	0.24%	11,170	21.18%	166	0.31%	765	1.45%	628	1.19%	467	0.89%	1,159	2.20%
10	51,489	35,308	68.57%	13,314	25.86%	78	0.15%	13,392	26.01%	131	0.25%	206	0.40%	2,236	4.34%	294	0.57%	3,184	6.18%
11	52,465	39,748	75.76%	10,659	20.32%	139	0.26%	10,798	20.58%	209	0.40%	670	1.28%	766	1.46%	413	0.79%	1,520	2.90%
12	47,490	23,260	48.98%	22,364	47.09%	198	0.42%	22,562	47.51%	160	0.34%	368	0.77%	846	1.78%	492	1.04%	1,680	3.54%
13	54,802	47,859	87.33%	5,655	10.32%	82	0.15%	5,737	10.47%	221	0.40%	287	0.52%	363	0.66%	417	0.76%	873	1.59%
14	47,818	33,773	70.63%	10,087	21.09%	312	0.65%	10,399	21.75%	315	0.66%	1,318	2.76%	1,211	2.53%	1,114	2.33%	2,685	5.62%
15	52,330	39,725	75.91%	7,442	14.22%	359	0.69%	7,801	14.91%	475	0.91%	882	1.69%	2,675	5.11%	1,131	2.16%	4,625	8.84%
16	54,865	49,355	89.96%	4,071	7.42%	91	0.17%	4,162	7.59%	211	0.38%	437	0.80%	404	0.74%	387	0.71%	1,033	1.88%
17	50,909	43,901	86.23%	5,620	11.04%	70	0.14%	5,690	11.18%	334	0.66%	170	0.33%	525	1.03%	359	0.71%	1,066	2.09%
18	48,715	28,125	57.73%	19,043	39.09%	130	0.27%	19,173	39.36%	221	0.45%	216	0.44%	699	1.43%	411	0.84%	1,492	3.06%
19	54,690	50,291	91.96%	2,953	5.40%	60	0.11%	3,013	5.51%	206	0.38%	542	0.99%	332	0.61%	366	0.67%	879	1.61%
20	47,405	31,908	67.31%	13,300	28.06%	110	0.23%	13,410	28.29%	1,199	2.53%	114	0.24%	613	1.29%	271	0.57%	1,073	2.26%
21	51,951	23,116	44.50%	24,906	47.94%	212	0.41%	25,118	48.35%	599	1.15%	264	0.51%	2,529	4.87%	537	1.03%	3,866	7.44%
22	50,853	34,573	67.99%	13,492	26.53%	126	0.25%	13,618	26.78%	1,260	2.48%	313	0.62%	748	1.47%	467	0.92%	1,614	3.17%
23	48,866	30,852	63.14%	16,589	33.95%	82	0.17%	16,671	34.12%	107	0.22%	124	0.25%	942	1.93%	252	0.52%	1,633	3.34%
24	46,620	19,398	41.61%	25,392	54.47%	136	0.29%	25,528	54.76%	131	0.28%	178	0.38%	1,202	2.58%	319	0.68%	2,290	4.91%
25	47,945	34,080	71.08%	12,306	25.67%	96	0.20%	12,402	25.87%	192	0.40%	190	0.40%	868	1.81%	309	0.64%	1,397	2.91%
26	52,047	39,332	75.57%	9,724	18.68%	77	0.15%	9,801	18.83%	191	0.37%	215	0.41%	2,175	4.18%	410	0.79%	3,957	7.60%
27	50,322	22,136	43.99%	26,479	52.62%	154	0.31%	26,633	52.93%	784	1.56%	143	0.28%	497	0.99%	283	0.56%	955	1.90%
28	51,997	43,984	84.59%	5,024	9.66%	74	0.14%	5,098	9.80%	383	0.74%	133	0.26%	2,149	4.13%	324	0.62%	3,404	6.55%
29	50,387	23,937	47.51%	22,230	44.12%	296	0.59%	22,526	44.71%	138	0.27%	1,821	3.61%	1,534	3.04%	727	1.44%	3,053	6.06%
30	52,042	34,719	66.71%	11,013	21.16%	281	0.54%	11,294	21.70%	128	0.25%	2,699	5.19%	2,565	4.93%	918	1.76%	4,410	8.47%
31	47,405	21,923	46.25%	20,951	44.20%	244	0.51%	21,195	44.71%	180	0.38%	1,358	2.86%	2,335	4.93%	658	1.39%	4,174	8.80%
32	49,907	30,200	60.51%	17,895	35.86%	181	0.36%	18,076	36.22%	208	0.42%	183	0.37%	1,003	2.01%	418	0.84%	1,976	3.96%
33	52,191	21,458	41.11%	25,674	49.19%	405	0.78%	26,079	49.97%	191	0.37%	1,432	2.74%	2,480	4.75%	956	1.83%	4,789	9.18%
34	53,978	43,294	80.21%	6,890	12.76%	227	0.42%	7,117	13.19%	133	0.25%	1,570	2.91%	1,379	2.55%	712	1.32%	3,476	6.44%
35	58,009	45,911	79.14%	5,789	9.98%	237	0.41%	6,026	10.39%	225	0.39%	3,466	5.97%	1,677	2.89%	941	1.62%	3,684	6.35%
36	50,999	44,341	86.94%	2,716	5.33%	138	0.27%	2,854	5.60%	135	0.26%	2,607	5.11%	535	1.05%	665	1.30%	1,727	3.39%
37	49,881	40,120	80.43%	7,354	14.74%	106	0.21%	7,460	14.96%	236	0.47%	782	1.57%	924	1.85%	465	0.93%	2,146	4.30%
38	57,254	35,289	61.64%	17,799	31.09%	308	0.54%	18,107	31.63%	321	0.56%	1,263	2.21%	1,784	3.12%	798	1.39%	3,212	5.61%
39	49,997	33,838	67.68%	13,349	26.70%	186	0.37%	13,535	27.07%	180	0.36%	592	1.18%	1,495	2.99%	543	1.09%	2,764	5.53%
40	48,798	42,841	87.79%	4,064	8.33%	81	0.17%	4,145	8.49%	101	0.21%	1,064	2.18%	377	0.77%	351	0.72%	967	1.98%
41	49,142	40,714	82.85%	4,079	8.30%	119	0.24%	4,198	8.54%	110	0.22%	3,243	6.60%	455	0.93%	541	1.10%	1,569	3.19%
42	42,733	19,042	44.56%	18,775	43.94%	501	1.17%	19,276	45.11%	392	0.92%	1,460	3.42%	1,878	4.39%	1,186	2.78%	3,839	8.98%
43	48,260	20,828	43.16%	23,043	47.75%	457	0.95%	23,500	48.69%	430	0.89%	1,062	2.20%	1,814	3.76%	1,083	2.24%	3,657	7.58%
44	49,282	31,294	63.50%	13,130	26.64%	400	0.81%	13,530	27.45%	583	1.18%	1,714	3.48%	1,417	2.88%	1,144	2.32%	3,287	6.67%
45	51,563	35,796	69.42%	12,257	23.77%	215	0.42%	12,472	24.19%	1,173	2.27%	738	1.43%	874	1.70%	725	1.41%	1,925	3.73%
46	45,932	28,886	62.89%	10,876	23.68%	119	0.26%	10,995	23.94%	4,283	9.32%	343	0.75%	1,013	2.21%	531	1.16%	1,974	4.30%
47	46,326	13,137	28.36%	7,179	15.50%	76	0.16%	7,255	15.66%	24,146	52.12%	234	0.51%	1,112	2.40%	518	1.12%	2,632	5.68%
48	44,752	15,115	33.78%	20,248	45.24%	97	0.22%	20,345	45.46%	8,147	18.20%	175	0.39%	676	1.51%	391	0.87%	1,409	3.15%
49	48,066	31,962	66.50%	13,569	28.23%	124	0.26%	13,693	28.49%	1,231	2.56%	204	0.42%	749	1.56%	351	0.73%	1,517	3.16%
50	48,700	35,400	72.69%	11,888	24.41%	137	0.28%	12,025	24.69%	165	0.34%	215	0.44%	608	1.25%	424	0.87%	1,127	2.31%
51	50,979	37,457	73.48%	9,663	18.95%	113	0.22%	9,776	19.18%	254	0.50%	407	0.80%	2,715	5.33%	483	0.95%	4,363	8.56%
52	54,949	45,471	82.75%	7,590	13.81%	94	0.17%	7,684	13.98%	333	0.61%	257	0.47%	974	1.77%	324	0.59%	1,772	3.22%
53	51,961	37,998	73.13%	11,150	21.46%	150	0.29%	11,300	21.75%	465	0.89%	368	0.71%	1,474	2.84%	506	0.97%	2,704	5.20%

A=Asian AI=American Indian and Alaskan Native PI=Native Hawaiian and other Pacific Islander
MR=Multi-Race Hisp=Hispanic or Latino (of any race)

Data Source: 2000 Census

House Redistricting Plan - Voting Age Population by Race and Ethnicity

		Race																Ethnicity	
District	Total	White	%White	Black	%Black	MR Black	%MR Black	Total Black	%Total Black	AI	%AI	A/PI	%A/PI	Other	%Other	MR	%MR	Hisp	%Hisp
54	51,893	40,668	78.37%	7,923	15.27%	114	0.22%	8,037	15.49%	181	0.35%	587	1.13%	2,105	4.06%	429	0.83%	3,608	6.95%
55	49,344	31,831	64.51%	15,620	31.66%	164	0.33%	15,784	31.99%	218	0.44%	326	0.66%	922	1.87%	427	0.87%	1,632	3.31%
56	53,223	41,671	78.30%	5,945	11.17%	293	0.55%	6,238	11.72%	220	0.41%	3,313	6.22%	1,195	2.25%	879	1.65%	2,727	5.12%
57	55,214	38,528	69.78%	11,441	20.72%	363	0.66%	11,804	21.38%	244	0.44%	2,507	4.54%	1,484	2.69%	1,010	1.83%	3,181	5.76%
58	53,169	23,372	43.96%	28,078	52.81%	288	0.54%	28,366	53.35%	228	0.43%	275	0.52%	706	1.33%	510	0.96%	1,284	2.41%
59	55,225	39,890	72.23%	12,732	23.05%	257	0.47%	12,989	23.52%	207	0.37%	894	1.62%	917	1.66%	585	1.06%	1,985	3.59%
60	50,780	22,300	43.91%	25,448	50.11%	243	0.48%	25,691	50.59%	377	0.74%	1,072	2.11%	973	1.92%	610	1.20%	1,966	3.87%
61	53,291	43,848	82.28%	6,146	11.53%	123	0.23%	6,269	11.76%	218	0.41%	1,690	3.17%	845	1.59%	544	1.02%	2,063	3.87%
62	53,530	47,315	88.39%	4,541	8.48%	81	0.15%	4,622	8.63%	152	0.28%	874	1.63%	289	0.54%	359	0.67%	946	1.77%
63	49,067	32,226	65.68%	13,532	27.58%	140	0.29%	13,672	27.86%	203	0.41%	498	1.01%	2,082	4.24%	526	1.07%	4,366	8.90%
64	50,579	45,124	89.21%	4,080	8.07%	88	0.17%	4,168	8.24%	140	0.28%	345	0.68%	577	1.14%	313	0.62%	1,406	2.78%
65	51,251	38,634	75.38%	11,271	21.99%	94	0.18%	11,365	22.18%	113	0.22%	169	0.33%	756	1.48%	308	0.60%	1,404	2.74%
66	52,297	35,713	68.29%	13,807	26.40%	107	0.20%	13,914	26.61%	613	1.17%	465	0.89%	1,219	2.33%	480	0.92%	2,487	4.76%
67	52,117	45,972	88.21%	4,765	9.14%	53	0.10%	4,818	9.24%	133	0.26%	569	1.09%	407	0.78%	271	0.52%	875	1.68%
68	49,936	45,707	91.53%	2,906	5.82%	52	0.10%	2,958	5.92%	199	0.40%	395	0.79%	413	0.83%	316	0.63%	984	1.97%
69	51,758	33,398	64.53%	15,825	30.57%	80	0.15%	15,905	30.73%	220	0.43%	195	0.38%	1,731	3.34%	389	0.75%	4,132	7.98%
70	49,261	43,573	88.45%	3,403	6.91%	76	0.15%	3,479	7.06%	226	0.46%	311	0.63%	1,352	2.74%	396	0.80%	3,211	6.52%
71	47,118	18,745	39.78%	23,839	50.59%	462	0.98%	24,301	51.57%	189	0.40%	320	0.68%	3,179	6.75%	846	1.80%	6,139	13.03%
72	49,102	25,203	51.33%	21,080	42.93%	228	0.46%	21,308	43.40%	147	0.30%	450	0.92%	1,685	3.43%	537	1.09%	3,764	7.67%
73	48,232	43,870	90.96%	2,696	5.59%	54	0.11%	2,750	5.70%	172	0.36%	396	0.82%	801	1.66%	297	0.62%	1,471	3.05%
74	48,989	43,799	89.41%	3,822	7.80%	93	0.19%	3,915	7.99%	115	0.23%	548	1.12%	369	0.75%	336	0.69%	873	1.78%
75	49,133	43,307	88.14%	4,001	8.14%	101	0.21%	4,102	8.35%	93	0.19%	817	1.66%	516	1.05%	399	0.81%	1,243	2.53%
76	49,536	45,323	91.50%	2,642	5.33%	25	0.05%	2,667	5.38%	161	0.33%	310	0.63%	802	1.62%	298	0.60%	1,685	3.40%
77	48,629	34,868	71.70%	11,734	24.13%	120	0.25%	11,854	24.38%	157	0.32%	501	1.03%	928	1.91%	441	0.91%	1,846	3.80%
78	48,590	44,836	92.27%	1,773	3.65%	94	0.19%	1,867	3.84%	217	0.45%	251	0.52%	1,147	2.36%	366	0.75%	2,295	4.72%
79	48,037	40,865	85.07%	5,661	11.78%	86	0.18%	5,747	11.96%	102	0.21%	403	0.84%	678	1.41%	328	0.68%	1,739	3.62%
80	53,334	50,712	95.08%	1,779	3.34%	21	0.04%	1,800	3.37%	165	0.31%	183	0.34%	238	0.45%	257	0.48%	630	1.18%
81	48,405	38,404	79.34%	7,479	15.45%	91	0.19%	7,570	15.64%	208	0.43%	606	1.25%	1,266	2.62%	442	0.91%	2,315	4.78%
82	48,247	39,726	82.34%	6,192	12.83%	82	0.17%	6,274	13.00%	166	0.34%	549	1.14%	1,248	2.59%	366	0.76%	2,945	6.10%
83	49,034	42,719	87.12%	4,823	9.84%	38	0.08%	4,861	9.91%	184	0.38%	322	0.66%	712	1.45%	274	0.56%	1,414	2.88%
84	50,242	47,707	94.95%	1,547	3.08%	33	0.07%	1,580	3.14%	146	0.29%	106	0.21%	467	0.93%	269	0.54%	1,066	2.12%
85	51,534	47,635	92.43%	2,212	4.29%	29	0.06%	2,241	4.35%	152	0.29%	684	1.33%	536	1.04%	315	0.61%	985	1.91%
86	48,775	42,156	86.43%	3,672	7.53%	56	0.11%	3,728	7.64%	135	0.28%	1,157	2.37%	1,246	2.55%	409	0.84%	2,013	4.13%
87	48,749	45,489	93.31%	2,066	4.24%	38	0.08%	2,104	4.32%	98	0.20%	190	0.39%	619	1.27%	287	0.59%	1,155	2.37%
88	49,105	42,544	86.64%	4,297	8.75%	70	0.14%	4,367	8.89%	81	0.16%	722	1.47%	1,063	2.16%	398	0.81%	2,322	4.73%
89	48,213	43,531	90.29%	3,032	6.29%	49	0.10%	3,081	6.39%	124	0.26%	589	1.22%	657	1.36%	280	0.58%	1,356	2.81%
90	49,272	45,197	91.73%	1,876	3.81%	40	0.08%	1,916	3.89%	119	0.24%	204	0.41%	1,405	2.85%	471	0.96%	2,836	5.76%
91	52,963	48,530	91.63%	3,401	6.42%	52	0.10%	3,453	6.52%	154	0.29%	113	0.21%	501	0.95%	264	0.50%	975	1.84%
92	48,495	45,489	93.80%	1,570	3.24%	37	0.08%	1,607	3.31%	91	0.19%	91	0.19%	983	2.03%	271	0.56%	2,004	4.13%
93	55,296	53,565	96.87%	709	1.28%	31	0.06%	740	1.34%	149	0.27%	259	0.47%	346	0.63%	268	0.48%	947	1.71%
94	50,816	47,507	93.49%	2,045	4.02%	49	0.10%	2,094	4.12%	72	0.14%	171	0.34%	768	1.51%	253	0.50%	1,510	2.97%
95	49,004	40,886	83.43%	6,483	13.23%	79	0.16%	6,562	13.39%	141	0.29%	529	1.08%	655	1.34%	310	0.63%	1,284	2.62%
96	48,937	43,265	88.41%	2,854	5.83%	48	0.10%	2,902	5.93%	131	0.27%	1,220	2.49%	1,089	2.23%	378	0.77%	2,803	5.73%
97	47,905	43,757	91.34%	2,830	5.91%	35	0.07%	2,865	5.98%	111	0.23%	137	0.29%	724	1.51%	346	0.72%	2,436	5.09%
98	51,289	44,436	86.64%	4,851	9.46%	95	0.19%	4,946	9.64%	137	0.27%	1,167	2.28%	345	0.67%	353	0.69%	1,264	2.46%
99	53,933	33,544	62.20%	14,959	27.74%	299	0.55%	15,258	28.29%	204	0.38%	2,823	5.23%	1,589	2.95%	814	1.51%	3,122	5.79%
100	54,237	31,757	58.55%	16,465	30.36%	334	0.62%	16,799	30.97%	227	0.42%	2,017	3.72%	2,737	5.05%	1,034	1.91%	6,260	11.54%
101	49,632	21,875	44.07%	24,882	50.13%	233	0.47%	25,115	50.60%	164	0.33%	1,090	2.20%	1,106	2.23%	515	1.04%	2,401	4.84%
102	52,432	21,855	41.68%	23,837	45.46%	338	0.64%	24,175	46.11%	242	0.46%	1,349	2.57%	4,288	8.18%	861	1.64%	6,506	12.41%
103	50,795	41,597	81.89%	6,519	12.83%	98	0.19%	6,617	13.03%	243	0.48%	1,163	2.29%	775	1.53%	498	0.98%	1,877	3.70%
104	55,463	50,845	91.67%	2,281	4.11%	60	0.11%	2,341	4.22%	68	0.12%	1,539	2.77%	345	0.62%	385	0.69%	1,266	2.28%
105	50,166	45,355	90.41%	2,175	4.34%	73	0.15%	2,248	4.48%	104	0.21%	1,813	3.61%	310	0.62%	409	0.82%	1,254	2.50%
106	54,417	34,895	64.13%	13,664	25.11%	212	0.39%		25.50%	266	0.49%	1,670	3.07%	2,807	5.16%	1,115	2	6,355	11.68%

A=Asian AI=American Indian and Alaskan Native PI=Native Hawaiian :r Pacific Islander
MR=Mulli-Race Hisp=Hisp ıtino (of any race)

Data Source: 2000 Census

House Redistricting Plan - Votin e Population by Race and Ethnicity

		Race																Ethnicity	
District	Total	White	%White	Black	%Black	MR Black	%MR Black	Total Black	%Total Black	AI	%AI	A/PI	%A/PI	Other	%Other	MR	%MR	Hisp	%Hisp
107	48,841	21,110	43.22%	24,427	50.01%	227	0.46%	24,654	50.48%	212	0.43%	1,483	3.04%	1,005	2.06%	604	1.24%	2,384	4.88%
108	54,184	47,841	88.29%	4,370	8.07%	68	0.13%	4,438	8.19%	145	0.27%	814	1.50%	651	1.20%	363	0.67%	1,619	2.99%
109	52,002	40,516	77.91%	10,124	19.47%	81	0.16%	10,205	19.62%	132	0.25%	395	0.76%	502	0.97%	333	0.64%	1,776	3.42%
110	52,897	46,821	88.51%	5,276	9.97%	38	0.07%	5,314	10.05%	135	0.26%	152	0.29%	268	0.51%	245	0.46%	870	1.64%
111	50,823	38,823	76.39%	10,967	21.58%	66	0.13%	11,033	21.71%	90	0.18%	439	0.86%	228	0.45%	276	0.54%	620	1.22%
112	53,593	46,984	87.67%	5,720	10.67%	58	0.11%	5,778	10.78%	96	0.18%	179	0.33%	349	0.65%	265	0.49%	829	1.55%
113	52,962	50,104	94.60%	1,792	3.38%	60	0.11%	1,852	3.50%	121	0.23%	170	0.32%	448	0.85%	327	0.62%	1,112	2.10%
114	52,455	46,675	88.98%	4,161	7.93%	70	0.13%	4,231	8.07%	221	0.42%	340	0.65%	554	1.06%	504	0.96%	1,397	2.66%
115	55,353	48,400	87.44%	5,385	9.73%	130	0.23%	5,515	9.96%	205	0.37%	401	0.72%	415	0.75%	547	0.99%	1,169	2.11%
116	53,393	50,495	94.57%	1,361	2.55%	55	0.10%	1,416	2.65%	175	0.33%	346	0.65%	593	1.11%	423	0.79%	1,368	2.56%
117	55,656	51,794	93.06%	1,751	3.15%	65	0.12%	1,816	3.26%	148	0.27%	379	0.68%	1,168	2.10%	416	0.75%	2,682	4.82%
118	50,270	48,870	97.22%	659	1.31%	15	0.03%	674	1.34%	165	0.33%	125	0.25%	180	0.36%	271	0.54%	581	1.16%
119	50,723	44,276	87.29%	699	1.38%	34	0.07%	733	1.45%	4,774	9.41%	202	0.40%	205	0.40%	567	1.12%	666	1.31%
120	50,824	48,924	96.26%	550	1.08%	35	0.07%	585	1.15%	706	1.39%	137	0.27%	141	0.28%	366	0.72%	577	1.14%
Statewide	6,085,266	4,527,155	74.40%	1,218,470	20.02%	16,446	0.27%	1,234,916	20.29%	69,522	1.14%	85,539	1.41%	126,833	2.08%	57,747	0.95%	258,873	4.25%

A=Asian AI=American Indian and Alaskan Native PI=Native Hawaiian and other Pacific Islander
MR=Multi-Race Hisp=Hispanic or Latino (of any race)

Data Source: NC State Board of Elections, December 2002

House Redistricting Plan - Voter Registration by Party and Race

Registration by Party

Dist.	VR Total	% D	Racial %s among D's: White % of D	Black % of D	AI % of D	Other % of D	% R	Racial %s among R's: White % of R	Black % of R	AI % of R	Other % of R	% U	Racial %s among U's: White % of U	Black % of U	AI % of U	Other % of U	% L	Dist.
1	41,957	56.48%	61.25%	37.77%	0.15%	0.66%	22.12%	94.17%	4.31%	0.14%	1.25%	21.26%	86.29%	11.37%	0.31%	1.67%	0.13%	1
2	41,458	59.42%	70.31%	29.04%	0.08%	0.47%	23.73%	96.74%	2.51%	0.06%	0.63%	16.71%	91.60%	6.83%	0.09%	1.17%	0.14%	2
3	40,802	46.74%	69.49%	29.57%	0.12%	0.74%	34.96%	96.58%	2.03%	0.19%	1.14%	18.19%	89.82%	7.91%	0.28%	1.78%	0.12%	3
4	32,917	58.54%	57.97%	40.76%	0.12%	0.79%	27.34%	94.15%	4.26%	0.12%	1.27%	14.01%	86.60%	10.28%	0.30%	2.23%	0.12%	4
5	42,034	77.27%	40.50%	58.86%	0.27%	0.25%	13.24%	84.82%	14.16%	0.18%	0.74%	9.43%	78.85%	19.46%	0.20%	1.21%	0.06%	5
6	43,793	55.65%	62.24%	36.89%	0.07%	0.61%	30.31%	96.27%	2.76%	0.11%	0.69%	13.84%	86.02%	11.42%	0.18%	1.91%	0.20%	6
7	37,380	71.89%	34.91%	63.58%	0.87%	0.61%	18.59%	80.87%	17.75%	0.33%	0.99%	9.47%	61.06%	35.98%	0.96%	2.01%	0.05%	7
8	38,249	70.36%	40.64%	58.61%	0.09%	0.51%	18.07%	87.30%	11.47%	0.10%	0.95%	11.43%	65.51%	31.98%	0.23%	2.04%	0.14%	8
9	41,322	51.53%	61.69%	36.63%	0.17%	1.17%	32.45%	94.96%	3.21%	0.19%	1.33%	15.84%	83.27%	12.44%	0.37%	3.06%	0.18%	9
10	37,066	63.12%	62.75%	36.61%	0.04%	0.48%	26.54%	94.54%	4.10%	0.12%	1.07%	10.25%	81.10%	16.58%	0.26%	1.84%	0.09%	10
11	35,702	49.28%	65.79%	33.20%	0.16%	0.77%	37.87%	96.18%	2.23%	0.16%	1.32%	12.74%	80.51%	15.66%	0.09%	3.45%	0.10%	11
12	37,865	61.24%	36.40%	62.49%	0.13%	0.73%	24.17%	88.62%	9.31%	0.20%	1.63%	14.47%	70.78%	25.64%	0.38%	2.50%	0.12%	12
13	47,956	44.63%	80.53%	18.86%	0.13%	0.43%	36.71%	98.32%	0.86%	0.18%	0.61%	18.51%	95.19%	3.36%	0.25%	1.13%	0.14%	13
14	31,670	42.78%	57.65%	38.55%	0.21%	3.46%	34.78%	90.04%	4.78%	0.35%	4.65%	22.13%	77.72%	14.89%	0.57%	6.48%	0.30%	14
15	21,240	43.05%	74.92%	22.18%	0.28%	2.42%	36.14%	94.20%	2.46%	0.34%	2.87%	20.52%	84.28%	10.12%	0.39%	4.96%	0.29%	15
16	48,249	36.79%	80.48%	18.14%	0.13%	0.90%	42.22%	98.14%	0.79%	0.09%	0.66%	20.57%	93.49%	3.86%	0.21%	1.58%	0.42%	16
17	46,209	44.24%	79.76%	19.36%	0.15%	0.61%	37.06%	97.70%	1.47%	0.09%	0.54%	18.58%	94.46%	3.73%	0.21%	1.32%	0.13%	17
18	38,850	59.01%	44.96%	53.72%	0.18%	0.71%	23.99%	92.64%	5.89%	0.19%	0.92%	16.57%	78.36%	18.19%	0.30%	1.93%	0.42%	18
19	52,682	35.71%	88.21%	10.39%	0.27%	0.80%	42.99%	98.16%	0.60%	0.14%	0.84%	20.91%	94.90%	2.65%	0.22%	1.63%	0.38%	19
20	41,690	71.06%	60.70%	36.01%	2.96%	0.31%	17.38%	92.99%	5.82%	0.68%	0.40%	11.51%	77.99%	19.11%	1.85%	0.98%	0.05%	20
21	37,491	64.76%	31.60%	65.97%	1.38%	0.98%	25.30%	89.64%	8.42%	0.47%	1.39%	9.84%	59.65%	35.71%	1.22%	3.25%	0.11%	21
22	40,215	61.63%	58.42%	39.02%	1.41%	1.05%	22.65%	91.68%	4.57%	1.25%	2.46%	15.60%	79.14%	14.78%	1.90%	4.02%	0.12%	22
23	40,621	66.23%	53.22%	46.21%	0.04%	0.51%	24.79%	92.05%	6.94%	0.04%	0.94%	8.84%	78.45%	19.41%	0.11%	2.01%	0.14%	23
24	39,144	70.98%	29.46%	69.80%	0.04%	0.66%	20.52%	82.70%	16.26%	0.06%	0.98%	8.39%	57.72%	39.36%	0.12%	2.77%	0.10%	24
25	38,777	53.79%	60.94%	37.72%	0.30%	1.01%	36.43%	94.66%	4.49%	0.10%	0.72%	9.70%	80.98%	15.90%	0.29%	2.82%	0.08%	25
26	43,171	48.18%	68.85%	30.04%	0.18%	0.91%	35.37%	96.16%	2.57%	0.20%	1.01%	16.31%	86.42%	10.52%	0.27%	2.66%	0.14%	26
27	39,631	80.50%	37.59%	60.40%	0.23%	1.72%	10.97%	84.31%	14.47%	0.18%	0.87%	8.49%	67.31%	30.01%	0.48%	1.93%	0.04%	27
28	42,542	42.31%	77.13%	21.21%	0.60%	0.99%	43.74%	97.44%	1.46%	0.31%	0.74%	13.83%	90.87%	6.41%	0.41%	2.21%	0.12%	28
29	50,848	60.78%	39.17%	57.14%	0.20%	1.89%	19.05%	90.14%	6.30%	0.15%	2.36%	19.85%	71.10%	21.46%	0.17%	4.85%	0.32%	29
30	46,031	54.39%	68.19%	27.73%	0.14%	2.25%	24.62%	94.03%	2.24%	0.12%	2.48%	20.72%	79.15%	11.45%	0.16%	5.93%	0.26%	30
31	39,455	63.36%	34.57%	63.00%	0.13%	1.15%	20.04%	88.87%	8.26%	0.25%	1.58%	16.37%	65.31%	27.53%	0.25%	4.15%	0.24%	31
32	34,468	67.29%	53.74%	45.35%	0.11%	0.76%	20.69%	92.48%	6.10%	0.15%	1.19%	11.89%	78.04%	19.25%	0.27%	2.24%	0.14%	32
33	39,523	63.97%	27.41%	70.07%	0.15%	1.65%	19.42%	86.27%	10.19%	0.21%	2.58%	16.39%	58.36%	35.06%	0.09%	5.31%	0.22%	33
34	47,414	42.04%	77.30%	19.67%	0.14%	2.42%	37.26%	96.41%	1.45%	0.10%	1.61%	20.45%	86.43%	7.95%	0.11%	4.51%	0.24%	34
35	43,898	44.53%	79.01%	17.12%	0.18%	3.17%	31.22%	95.21%	1.61%	0.12%	2.55%	23.84%	86.35%	6.16%	0.26%	6.27%	0.41%	35
36	48,095	33.73%	84.63%	11.55%	0.14%	3.15%	41.91%	96.59%	0.65%	0.03%	2.23%	24.09%	90.24%	3.04%	0.10%	5.92%	0.27%	36
37	47,881	36.91%	67.95%	29.34%	0.33%	1.88%	42.38%	96.86%	1.31%	0.13%	1.27%	20.45%	90.03%	5.90%	0.15%	3.00%	0.25%	37
38	41,351	55.38%	50.12%	47.46%	0.21%	1.49%	24.71%	91.56%	5.71%	0.11%	2.01%	19.54%	75.59%	18.91%	0.28%	4.01%	0.37%	38
39	41,529	51.09%	51.44%	46.63%	0.18%	1.25%	32.21%	94.66%	3.40%	0.18%	1.36%	16.49%	77.51%	18.10%	0.35%	3.21%	0.21%	39
40	51,431	32.25%	79.05%	18.19%	0.08%	2.16%	46.63%	96.91%	0.74%	0.06%	1.78%	20.90%	91.31%	3.91%	0.10%	3.92%	0.22%	40
41	48,001	32.14%	75.52%	18.89%	0.15%	4.77%	41.71%	95.63%	0.97%	0.10%	2.67%	25.86%	86.99%	5.10%	0.15%	6.95%	0.30%	41
42	27,624	53.18%	21.35%	72.72%	0.49%	5.36%	24.13%	75.22%	13.67%	0.68%	10.26%	22.51%	49.16%	37.56%	0.66%	12.27%	0.18%	42
43	30,624	59.57%	20.66%	74.89%	0.47%	3.84%	20.43%	76.09%	14.91%	0.72%	8.13%	19.79%	47.81%	40.68%	0.61%	10.58%	0.21%	43
44	38,868	49.83%	53.12%	42.06%	0.66%	4.06%	29.92%	87.40%	5.65%	0.64%	6.17%	19.97%	66.26%	21.92%	0.95%	10.53%	0.29%	44
45	39,477	51.41%	56.86%	38.91%	1.71%	2.45%	29.87%	90.79%	4.57%	0.98%	3.58%	18.56%	73.55%	17.94%	1.54%	6.85%	0.16%	45
46	34,436	64.71%	59.57%	29.98%	9.05%	1.31%	19.65%	87.38%	5.38%	4.42%	2.73%	15.51%	77.05%	13.61%	5.37%	3.74%	0.13%	46
47	34,605	82.90%	24.53%	15.76%	58.17%	1.40%	9.66%	62.00%	6.07%	29.62%	2.24%	7.42%	47.97%	13.68%	32.81%	4.68%	0.03%	47
48	38,059	81.53%	29.61%	53.99%	15.64%	0.67%	8.81%	68.65%	17.87%	11.72%	1.67%	9.59%	50.77%	32.93%	13.78%	2.33%	0.07%	48
49	37,938	60.37%	56.05%	40.09%	3.03%	0.55%	26.69%	93.45%	4.78%	0.52%	0.91%	12.84%	83.53%	12.73%	1.40%	1.48%	0.10%	49
50	43,143	59.19%	64.17%	34.65%	0.14%	0.85%	25.21%	95.71%	3.05%	0.09%	0.85%	15.34%	89.46%	7.85%	0.17%	1.77%	0.26%	50
51	37,084	53.05%	68.86%	29.45%	0.24%	1.26%	29.43%	94.75%	2.70%	0.21%	2.02%	17.37%	83.20%	12.34%	0.39%	3.54%	0.15%	51
52	48,295	34.24%	65.98%	32.69%	0.54%	0.76%	46.14%	97.90%	1.23%	0.26%	0.60%	19.48%	92.85%	5.68%	0.30%	1.15%	0.14%	52
53	35,509	54.52%	65.62%	32.70%	0.52%	0.95%	33.01%	94.51%	3.57%	0.42%	1.27%	12.35%	82.49%	12.86%	0.89%	3.17%	0.11%	53

Registration by Race without regard to Party

Dist.	% White	% Black	% AI	% Other	Dist.
1	73.88%	24.73%	0.18%	1.01%	1
2	80.17%	19.00%	0.07%	0.63%	2
3	82.68%	15.97%	0.17%	1.07%	3
4	71.91%	26.48%	0.15%	1.12%	4
5	50.00%	49.21%	0.25%	0.41%	5
6	75.90%	22.97%	0.10%	0.82%	6
7	45.96%	52.42%	0.78%	0.81%	7
8	51.93%	47.01%	0.10%	0.78%	8
9	75.94%	21.91%	0.21%	1.53%	9
10	73.09%	25.90%	0.09%	0.78%	10
11	79.20%	19.21%	0.15%	1.32%	11
12	54.06%	44.24%	0.18%	1.21%	12
13	89.79%	9.36%	0.17%	0.63%	13
14	73.42%	21.48%	0.34%	4.56%	14
15	83.83%	12.53%	0.33%	3.13%	15
16	90.67%	7.80%	0.13%	0.95%	16
17	89.15%	9.81%	0.14%	0.72%	17
18	62.12%	36.15%	0.20%	0.98%	18
19	93.90%	4.53%	0.20%	1.00%	19
20	68.32%	28.80%	2.43%	0.41%	20
21	49.07%	48.39%	1.13%	1.32%	21
22	69.22%	27.40%	1.45%	1.84%	22
23	65.12%	34.06%	0.05%	0.75%	23
24	42.78%	56.24%	0.05%	0.90%	24
25	75.18%	23.48%	0.23%	1.09%	25
26	81.39%	17.11%	0.20%	1.24%	26
27	45.26%	52.76%	0.24%	1.65%	27
28	87.93%	10.51%	0.45%	1.05%	28
29	55.33%	40.24%	0.18%	2.58%	29
30	76.86%	18.03%	0.14%	3.08%	30
31	50.59%	46.11%	0.17%	1.73%	31
32	64.69%	34.08%	0.14%	1.03%	32
33	44.01%	52.59%	0.15%	2.44%	33
34	86.32%	10.45%	0.12%	2.55%	34
35	85.88%	9.60%	0.18%	3.72%	35
36	91.02%	4.90%	0.09%	3.44%	36
37	84.79%	12.60%	0.21%	1.85%	37
38	65.45%	31.43%	0.20%	2.13%	38
39	69.72%	27.93%	0.21%	1.62%	39
40	89.96%	7.03%	0.08%	2.36%	40
41	86.92%	7.81%	0.13%	4.45%	41
42	40.67%	50.48%	0.58%	8.10%	42
43	37.44%	55.76%	0.55%	6.07%	43
44	66.05%	27.09%	0.71%	5.99%	44
45	70.13%	24.73%	1.46%	3.61%	45
46	67.75%	22.60%	7.56%	1.98%	46
47	29.90%	14.67%	53.52%	1.73%	47
48	35.09%	48.77%	15.12%	0.92%	48
49	69.59%	27.12%	2.15%	0.76%	49
50	76.08%	22.49%	0.13%	0.99%	50
51	79.00%	18.57%	0.26%	1.88%	51
52	85.96%	12.88%	0.36%	0.77%	52
53	77.27%	20.60%	0.53%	1.33%	53

D = tic R = Republican U = Unaffiliated L = Libertarian AI = American Indian

Voters who do not designate a race are omitted from this chart, so the percentage ! add up to 100%.

Data Source: NC State Board of Elections, December 2002

House Redistricting Plan - V Registration by Party and Race

Registration by Party

Dist.	VR Total	% D	Racial %s among D's: White % of D	Black % of D	AI % of D	Other % of D	% R	Racial %s among R's: White % of R	Black % of R	AI % of R	Other % of R	% U	Racial %s among U's: White % of U	Black % of U	AI % of U	Other % of U	% L	Dist.
54	46,810	54.02%	74.57%	23.77%	0.12%	1.36%	26.79%	96.63%	1.80%	0.08%	1.28%	18.93%	91.24%	4.73%	0.18%	3.26%	0.26%	54
55	39,432	61.78%	56.46%	41.82%	0.31%	0.78%	23.66%	93.73%	4.43%	0.28%	1.06%	14.41%	77.70%	18.71%	0.40%	1.76%	0.16%	55
56	52,255	53.52%	78.63%	16.60%	0.20%	3.90%	20.81%	93.38%	1.75%	0.20%	4.07%	25.24%	85.17%	5.55%	0.20%	7.26%	0.43%	56
57	44,826	47.47%	61.47%	36.34%	0.28%	1.92%	33.42%	95.71%	2.54%	0.21%	1.54%	18.92%	81.63%	13.83%	0.52%	4.02%	0.20%	57
58	48,588	64.81%	23.67%	75.74%	0.17%	0.42%	22.02%	90.12%	9.17%	0.15%	0.56%	13.06%	54.46%	43.82%	0.28%	1.43%	0.12%	58
59	46,132	51.14%	62.49%	36.39%	0.17%	0.95%	31.25%	96.39%	2.68%	0.12%	0.81%	17.35%	81.13%	16.30%	0.16%	2.41%	0.26%	59
60	38,887	61.27%	27.88%	70.77%	0.32%	1.02%	23.70%	88.76%	9.60%	0.43%	1.20%	14.88%	60.49%	36.29%	0.66%	2.56%	0.15%	60
61	47,289	36.97%	70.87%	27.15%	0.22%	1.76%	45.23%	97.26%	1.38%	0.13%	1.22%	17.63%	87.75%	8.67%	0.25%	3.32%	0.16%	61
62	52,976	36.40%	79.74%	18.73%	0.17%	1.36%	44.80%	98.22%	0.72%	0.09%	0.96%	18.57%	91.37%	5.74%	0.21%	2.67%	0.22%	62
63	33,726	55.80%	54.54%	44.14%	0.15%	0.89%	28.69%	95.25%	3.64%	0.08%	0.78%	15.35%	83.25%	13.98%	0.17%	1.95%	0.16%	63
64	39,611	41.12%	83.60%	15.29%	0.12%	0.75%	41.68%	98.39%	0.66%	0.09%	0.64%	17.12%	94.18%	3.80%	0.18%	1.33%	0.09%	64
65	40,059	55.30%	64.94%	34.20%	0.07%	0.48%	28.59%	95.48%	3.56%	0.16%	0.59%	16.01%	84.75%	12.59%	0.34%	1.56%	0.10%	65
66	43,195	68.57%	62.31%	36.44%	0.46%	0.51%	19.91%	92.54%	5.53%	0.52%	1.05%	11.43%	79.03%	17.32%	1.03%	2.17%	0.09%	66
67	42,322	39.45%	82.62%	16.65%	0.03%	0.68%	43.43%	98.54%	0.89%	0.13%	0.43%	17.05%	93.60%	5.15%	0.12%	1.03%	0.07%	67
68	50,982	29.32%	82.51%	15.68%	0.30%	1.13%	49.62%	97.87%	0.69%	0.18%	0.91%	20.84%	94.07%	3.33%	0.24%	1.73%	0.22%	68
69	38,424	61.20%	54.11%	45.02%	0.14%	0.56%	24.61%	91.80%	6.97%	0.22%	0.78%	14.10%	78.90%	18.40%	0.31%	1.86%	0.09%	69
70	35,524	32.29%	80.82%	18.01%	0.19%	0.82%	51.58%	98.26%	0.88%	0.17%	0.52%	16.01%	92.61%	4.98%	0.51%	1.55%	0.12%	70
71	33,373	64.72%	28.85%	69.65%	0.12%	0.85%	20.71%	88.92%	8.96%	0.14%	1.37%	14.42%	62.14%	32.61%	0.37%	3.08%	0.15%	71
72	33,688	62.01%	31.50%	67.37%	0.09%	0.59%	24.68%	91.94%	6.18%	0.17%	1.18%	13.14%	66.89%	28.84%	0.23%	2.42%	0.18%	72
73	39,942	31.32%	82.56%	16.16%	0.16%	0.74%	51.57%	98.39%	0.69%	0.13%	0.56%	16.95%	94.54%	3.68%	0.19%	1.14%	0.16%	73
74	44,534	40.49%	82.25%	16.62%	0.11%	0.77%	43.93%	98.26%	0.71%	0.08%	0.63%	15.43%	91.98%	4.98%	0.12%	2.14%	0.15%	74
75	43,176	36.18%	79.28%	19.22%	0.06%	1.13%	46.39%	97.69%	0.82%	0.05%	1.12%	17.28%	90.40%	6.01%	0.04%	2.75%	0.16%	75
76	40,426	33.00%	86.47%	12.64%	0.13%	0.53%	49.22%	98.59%	0.64%	0.13%	0.46%	17.66%	94.86%	3.29%	0.21%	1.12%	0.12%	76
77	39,777	46.47%	56.04%	42.74%	0.12%	0.71%	36.84%	94.81%	3.62%	0.20%	1.09%	16.56%	78.93%	17.99%	0.18%	2.06%	0.13%	77
78	34,868	27.99%	89.63%	9.33%	0.19%	0.72%	55.77%	98.95%	0.39%	0.10%	0.41%	16.12%	95.55%	2.40%	0.36%	1.09%	0.12%	78
79	37,023	35.18%	72.72%	26.17%	0.02%	0.89%	49.80%	98.32%	1.04%	0.03%	0.44%	14.87%	91.41%	6.19%	0.11%	1.98%	0.14%	79
80	44,988	31.64%	90.14%	9.15%	0.15%	0.56%	54.02%	99.24%	0.33%	0.17%	0.26%	14.18%	96.36%	2.43%	0.30%	0.91%	0.15%	80
81	37,546	49.17%	70.29%	28.86%	0.15%	0.70%	37.30%	96.87%	2.34%	0.18%	0.61%	13.41%	88.54%	9.33%	0.46%	1.65%	0.11%	81
82	42,466	38.51%	69.54%	28.88%	0.10%	1.08%	42.04%	96.99%	1.67%	0.08%	0.92%	19.33%	89.56%	7.13%	0.26%	2.30%	0.12%	82
83	43,217	38.39%	77.24%	21.75%	0.14%	0.63%	43.16%	98.05%	1.09%	0.16%	0.53%	18.32%	92.85%	5.18%	0.25%	1.20%	0.13%	83
84	43,454	27.31%	94.13%	5.43%	0.03%	0.30%	56.46%	99.43%	0.25%	0.04%	0.17%	16.14%	98.03%	1.04%	0.17%	0.64%	0.09%	84
85	38,651	43.11%	93.91%	5.39%	0.05%	0.61%	38.04%	99.02%	0.37%	0.01%	0.55%	18.68%	97.22%	1.23%	0.14%	1.27%	0.17%	85
86	37,636	47.39%	85.42%	13.57%	0.11%	0.85%	34.55%	97.96%	0.92%	0.05%	1.01%	17.93%	93.54%	4.08%	0.09%	2.13%	0.14%	86
87	38,662	37.28%	89.10%	10.05%	0.06%	0.40%	46.30%	98.44%	0.54%	0.06%	0.33%	16.29%	96.17%	1.91%	0.16%	0.76%	0.13%	87
88	41,610	37.92%	80.85%	17.90%	0.06%	1.07%	45.20%	97.93%	1.17%	0.05%	0.74%	16.72%	92.80%	4.66%	0.11%	1.87%	0.16%	88
89	40,175	35.59%	84.54%	14.35%	0.06%	0.88%	46.96%	98.39%	0.77%	0.05%	0.59%	17.28%	95.02%	3.15%	0.17%	1.18%	0.16%	89
90	35,978	50.28%	93.18%	6.15%	0.03%	0.45%	34.92%	98.57%	0.58%	0.04%	0.49%	14.73%	95.60%	2.26%	0.13%	1.38%	0.07%	90
91	42,164	41.95%	86.18%	12.91%	0.14%	0.59%	43.34%	98.52%	0.57%	0.10%	0.62%	14.56%	94.96%	2.80%	0.24%	1.32%	0.15%	91
92	37,798	30.26%	91.62%	7.61%	0.07%	0.40%	54.96%	99.00%	0.44%	0.03%	0.38%	14.69%	95.68%	2.77%	0.22%	1.04%	0.09%	92
93	54,842	36.83%	97.14%	2.16%	0.07%	0.57%	41.42%	99.25%	0.27%	0.03%	0.38%	21.42%	97.50%	0.95%	0.20%	1.23%	0.32%	93
94	37,868	31.53%	89.69%	9.58%	0.03%	0.49%	54.75%	98.75%	0.70%	0.01%	0.37%	13.59%	95.36%	3.13%	0.06%	0.80%	0.12%	94
95	41,434	37.57%	72.77%	26.07%	0.11%	0.77%	42.59%	97.60%	1.36%	0.08%	0.60%	19.69%	91.88%	6.18%	0.13%	1.25%	0.14%	95
96	41,846	33.58%	83.45%	14.45%	0.04%	1.95%	47.90%	97.88%	0.89%	0.09%	1.00%	18.22%	93.64%	3.45%	0.13%	2.40%	0.29%	96
97	40,823	41.25%	87.64%	11.59%	0.04%	0.65%	41.32%	98.68%	0.53%	0.08%	0.62%	17.29%	95.25%	3.07%	0.14%	1.23%	0.14%	97
98	49,576	30.81%	71.18%	26.01%	0.20%	1.83%	46.01%	97.13%	0.95%	0.07%	1.21%	23.04%	90.57%	5.28%	0.33%	2.73%	0.14%	98
99	38,982	46.63%	38.61%	57.65%	0.30%	2.46%	30.93%	93.18%	3.48%	0.17%	2.29%	22.24%	75.29%	17.58%	0.35%	5.05%	0.20%	99
100	39,927	49.17%	46.12%	50.34%	0.18%	2.47%	29.01%	92.65%	4.07%	0.18%	2.54%	21.54%	73.04%	20.29%	0.44%	4.77%	0.28%	100
101	40,721	63.90%	26.20%	71.82%	0.16%	0.92%	20.81%	89.18%	8.85%	0.12%	1.38%	15.09%	62.59%	32.45%	0.39%	2.51%	0.21%	101
102	37,292	62.67%	32.77%	65.14%	0.16%	1.10%	18.99%	86.49%	10.67%	0.20%	1.99%	18.11%	65.89%	28.56%	0.46%	3.38%	0.23%	102
103	46,446	35.59%	66.87%	30.40%	0.21%	1.97%	43.25%	96.78%	1.32%	0.16%	1.24%	20.98%	87.74%	8.09%	0.47%	2.92%	0.19%	103
104	54,320	29.71%	87.62%	9.92%	0.09%	1.91%	49.54%	97.97%	0.39%	0.11%	1.09%	20.58%	92.66%	3.14%	0.24%	2.89%	0.17%	104
105	53,259	23.83%	82.16%	13.61%	0.24%	3.25%	51.94%	97.25%	0.50%	0.10%	1.51%	24.03%	91.87%	2.93%	0.39%	3.90%	0.20%	105
106	43,504	47.30%	51.12%	46.21%	0.19%	1.95%	31.51%	94.09%	3.66%	0.18%	1.58%	20.92%	79.76%	14.57%	0.54%	3.73%	0.27%	106

Registration by Race witho regard to Party

Dist.	% White	% Black	% AI	% Other	Dist.
54	83.69%	14.22%	0.12%	1.70%	54
55	68.38%	29.60%	0.32%	0.99%	55
56	83.40%	10.66%	0.20%	4.79%	56
57	76.78%	20.72%	0.30%	2.20%	57
58	42.37%	56.87%	0.18%	0.58%	58
59	76.38%	22.30%	0.15%	1.17%	59
60	47.21%	51.08%	0.40%	1.31%	60
61	85.81%	12.21%	0.18%	1.80%	61
62	90.20%	8.22%	0.14%	1.43%	62
63	70.66%	27.84%	0.14%	1.03%	63
64	91.58%	7.22%	0.12%	0.81%	64
65	76.86%	21.96%	0.14%	0.69%	65
66	70.25%	28.08%	0.53%	0.81%	66
67	91.41%	7.83%	0.09%	0.63%	67
68	92.57%	5.64%	0.23%	1.15%	68
69	66.92%	31.87%	0.19%	0.80%	69
70	91.72%	7.07%	0.23%	0.78%	70
71	46.18%	51.65%	0.16%	1.28%	71
72	51.15%	47.12%	0.13%	0.97%	72
73	92.76%	6.06%	0.15%	0.71%	73
74	90.81%	7.81%	0.10%	0.92%	74
75	89.77%	8.37%	0.05%	1.41%	75
76	93.91%	5.08%	0.14%	0.61%	76
77	74.15%	24.18%	0.16%	1.08%	77
78	95.80%	3.21%	0.17%	0.61%	78
79	88.27%	10.65%	0.04%	0.83%	79
80	95.94%	3.42%	0.19%	0.45%	80
81	82.67%	16.32%	0.20%	0.80%	81
82	84.97%	13.21%	0.12%	1.25%	82
83	89.10%	9.77%	0.17%	0.69%	83
84	97.75%	1.79%	0.06%	0.29%	84
85	96.46%	2.70%	0.05%	0.72%	85
86	91.21%	7.49%	0.09%	1.14%	86
87	94.59%	4.30%	0.08%	0.42%	87
88	90.58%	8.11%	0.06%	1.06%	88
89	92.87%	6.03%	0.07%	0.79%	89
90	95.42%	3.63%	0.05%	0.60%	90
91	92.81%	6.08%	0.14%	0.72%	91
92	96.28%	2.95%	0.07%	0.48%	92
93	98.09%	1.11%	0.09%	0.64%	93
94	95.43%	3.83%	0.03%	0.47%	94
95	87.15%	11.59%	0.10%	0.79%	95
96	92.25%	5.92%	0.08%	1.58%	96
97	93.53%	5.53%	0.08%	0.74%	97
98	87.62%	9.67%	0.17%	1.75%	98
99	63.73%	31.89%	0.27%	2.99%	99
100	65.49%	30.34%	0.24%	3.01%	100
101	44.88%	52.68%	0.19%	1.27%	101
102	49.05%	48.07%	0.22%	1.70%	102
103	84.22%	13.09%	0.24%	1.87%	103
104	93.79%	3.79%	0.13%	1.71%	104
105	92.35%	4.21%	0.20%	2.50%	105
106	70.72%	26.09%	0.26%	2.22%	106

D = Democratic R = Republican U = Unaffiliated L = Libertarian AI = American Indian

Voters who do not designate a race are omitted from this chart, so the percentages may not add up to 100%.

Data Source: NC State Board of Elections, December 2002

House Redistricting Plan - Voter Registration by Party and Race

Registration by Party

Dist.	VR Total	% D	Racial %s among D's: White % of D	Black % of D	AI % of D	Other % of D	% R	Racial %s among R's: White % of R	Black % of R	AI % of R	Other % of R	% U	Racial %s among U's: White % of U	Black % of U	AI % of U	Other % of U	% L
107	40,029	58.87%	25.66%	72.29%	0.19%	1.23%	23.73%	88.83%	8.22%	0.23%	2.22%	17.22%	65.61%	29.11%	0.46%	3.50%	0.19%
108	43,453	39.16%	83.90%	15.29%	0.09%	0.70%	41.46%	98.51%	0.80%	0.07%	0.61%	19.27%	92.20%	6.10%	0.17%	1.52%	0.12%
109	38,871	43.73%	63.39%	35.98%	0.05%	0.58%	39.17%	96.64%	2.66%	0.06%	0.62%	17.03%	84.13%	14.14%	0.20%	1.48%	0.07%
110	37,802	46.70%	81.89%	17.61%	0.07%	0.41%	37.06%	98.21%	1.20%	0.11%	0.44%	16.11%	92.56%	6.26%	0.13%	1.02%	0.12%
111	38,052	55.59%	65.20%	34.10%	0.06%	0.58%	30.10%	95.38%	3.67%	0.13%	0.76%	14.18%	85.86%	11.80%	0.17%	1.98%	0.12%
112	42,860	51.69%	82.43%	16.95%	0.05%	0.33%	31.54%	97.10%	1.77%	0.15%	0.70%	16.68%	91.54%	6.39%	0.27%	1.11%	0.10%
113	51,518	34.42%	91.12%	8.13%	0.05%	0.60%	42.83%	98.87%	0.53%	0.06%	0.45%	22.60%	96.68%	2.03%	0.09%	1.03%	0.15%
114	43,025	49.71%	86.77%	11.56%	0.13%	0.87%	28.73%	97.54%	0.98%	0.13%	0.73%	21.19%	91.99%	3.52%	0.29%	2.30%	0.36%
115	46,888	48.19%	83.06%	15.11%	0.14%	0.88%	31.40%	97.36%	1.11%	0.14%	0.76%	20.12%	92.58%	3.71%	0.19%	2.03%	0.29%
116	44,896	42.39%	94.80%	3.81%	0.13%	0.61%	37.65%	98.28%	0.33%	0.09%	0.54%	19.75%	95.14%	1.70%	0.19%	1.58%	0.21%
117	53,160	28.72%	91.79%	7.13%	0.08%	0.84%	47.33%	98.75%	0.34%	0.05%	0.66%	23.70%	96.68%	1.35%	0.15%	1.59%	0.24%
118	44,749	55.43%	98.11%	1.43%	0.10%	0.29%	28.34%	99.17%	0.13%	0.17%	0.43%	16.06%	98.19%	0.43%	0.32%	0.81%	0.18%
119	44,946	49.63%	92.15%	1.72%	5.33%	0.49%	29.55%	93.73%	0.32%	5.12%	0.44%	20.67%	88.33%	0.85%	9.20%	1.08%	0.15%
120	49,823	40.64%	97.08%	1.42%	0.98%	0.35%	41.76%	98.84%	0.15%	0.54%	0.28%	17.37%	97.46%	0.55%	0.89%	0.87%	0.23%
State	4,999,372	48.27%	62.93%	34.33%	1.30%	1.15%	34.34%	95.79%	2.50%	0.30%	1.15%	17.21%	85.19%	10.71%	0.60%	2.83%	0.18%

Registration by Race without regard to Party

Dist.	% White	% Black	% AI	% Other	Dist.
107	47.62%	49.55%	0.25%	1.86%	107
108	91.57%	7.50%	0.10%	0.82%	108
109	79.97%	19.18%	0.08%	0.75%	109
110	89.68%	9.69%	0.09%	0.52%	110
111	77.24%	21.75%	0.10%	0.83%	111
112	88.58%	10.39%	0.12%	0.58%	112
113	95.70%	3.49%	0.07%	0.64%	113
114	91.00%	6.78%	0.16%	1.14%	114
115	89.49%	8.38%	0.15%	1.08%	115
116	96.17%	2.08%	0.13%	0.79%	116
117	96.25%	2.53%	0.09%	0.93%	117
118	98.41%	0.90%	0.16%	0.42%	118
119	91.81%	1.13%	6.08%	0.60%	119
120	97.88%	0.74%	0.78%	0.41%	120
State	78.09%	19.29%	0.83%	1.44%	State

Voter registration data is estimated since it is collected at the precinct level and districts are created at the census block level.

D = atic R = Republican U = Unaffiliated L = Libertarian AI = American Indian

Voters who do not designate a race are omitted from this chart, so the percentage it add up to 100%.

House Redistricting Plan - Voter Registration by Gender and Age

	Gender					Age							
District	Total	Male	%Male	Female	%Female	18 - 25	%18 - 25	26 - 40	%26 - 40	41 - 65	%41 - 65	66 up	%66 up
1	41,937	19,111	45.57%	22,826	54.43%	4,844	11.55%	11,358	27.09%	18,369	43.80%	7,363	17.56%
2	41,433	18,927	45.68%	22,506	54.32%	3,148	7.60%	10,019	24.17%	19,735	47.61%	8,546	20.62%
3	40,826	18,364	44.98%	22,462	55.02%	3,469	8.50%	9,473	23.20%	18,393	45.05%	9,490	23.25%
4	32,799	14,442	44.03%	18,357	55.97%	3,407	10.37%	8,802	26.80%	14,575	44.37%	6,065	18.46%
5	41,972	17,985	42.85%	23,987	57.15%	3,936	9.37%	10,330	24.58%	18,510	44.05%	9,245	22.00%
6	43,750	19,560	44.71%	24,190	55.29%	4,936	11.32%	11,955	27.41%	18,664	42.78%	8,068	18.49%
7	37,361	15,490	41.46%	21,871	58.54%	3,817	10.50%	10,809	29.74%	15,544	42.77%	6,171	16.98%
8	38,276	16,188	42.29%	22,088	57.71%	4,312	11.38%	11,395	30.08%	15,763	41.60%	6,418	16.94%
9	41,292	18,106	43.85%	23,186	56.15%	6,520	15.97%	13,904	34.05%	15,876	38.87%	4,539	11.11%
10	37,026	16,428	44.37%	20,598	55.63%	3,669	9.91%	9,912	26.76%	16,955	45.77%	6,505	17.56%
11	35,690	16,017	44.88%	19,673	55.12%	3,265	9.21%	10,009	28.25%	16,198	45.71%	5,961	16.82%
12	37,788	15,649	41.41%	22,139	58.59%	3,918	10.36%	10,169	26.89%	16,218	42.88%	7,517	19.87%
13	47,934	22,267	46.45%	25,667	53.55%	4,001	8.34%	10,970	22.88%	22,640	47.22%	10,335	21.56%
14	31,624	13,771	43.55%	17,853	56.45%	4,663	14.73%	10,133	32.01%	13,078	41.31%	3,786	11.96%
15	21,215	9,614	45.32%	11,601	54.68%	3,320	15.63%	7,090	33.38%	7,943	37.40%	2,885	13.58%
16	48,025	22,430	46.70%	25,595	53.30%	5,609	11.62%	14,119	29.25%	20,383	42.23%	8,157	16.90%
17	46,154	21,410	46.39%	24,744	53.61%	3,050	6.60%	9,938	21.52%	22,361	48.42%	10,830	23.45%
18	38,634	16,811	43.51%	21,823	56.49%	4,603	11.85%	12,479	32.14%	15,752	40.57%	5,994	15.44%
19	52,471	24,427	46.55%	28,044	53.45%	4,735	8.99%	15,319	29.08%	23,811	45.20%	8,816	16.73%
20	41,692	18,661	44.76%	23,031	55.24%	4,172	10.01%	11,407	27.37%	18,368	44.07%	7,736	18.56%
21	37,484	15,916	42.46%	21,568	57.54%	3,599	9.65%	9,951	26.69%	16,236	43.55%	7,498	20.11%
22	40,195	17,913	44.57%	22,282	55.43%	4,181	10.77%	11,719	30.20%	17,554	45.24%	5,351	13.79%
23	40,614	17,956	44.21%	22,658	55.79%	4,108	10.14%	11,466	28.29%	18,144	44.77%	6,813	16.81%
24	39,140	16,345	41.76%	22,795	58.24%	4,131	10.61%	11,308	29.03%	16,871	43.31%	6,643	17.05%
25	38,780	17,493	45.11%	21,287	54.89%	3,871	10.41%	10,786	29.02%	17,343	46.66%	5,171	13.91%
26	43,155	19,451	45.07%	23,704	54.93%	3,868	9.22%	15,026	35.84%	18,177	43.35%	4,860	11.59%
27	39,619	16,973	42.84%	22,646	57.16%	3,535	8.95%	9,956	25.19%	17,325	43.84%	8,702	22.02%
28	42,525	19,644	46.19%	22,881	53.81%	4,077	9.76%	14,728	35.27%	17,632	42.22%	5,323	12.75%
29	50,442	21,094	41.82%	29,348	58.18%	6,225	12.24%	20,948	41.20%	17,989	35.38%	5,678	11.17%
30	45,670	20,308	44.47%	25,362	55.53%	4,623	10.05%	17,490	38.01%	17,634	38.32%	6,271	13.63%
31	39,156	16,820	42.96%	22,336	57.04%	3,351	8.50%	15,098	38.29%	16,577	42.04%	4,402	11.16%
32	34,458	14,879	43.18%	19,579	56.82%	2,831	8.24%	10,550	30.69%	15,302	44.52%	5,689	16.55%
33	39,324	17,027	43.30%	22,297	56.70%	4,580	11.59%	15,452	39.11%	15,327	38.79%	4,155	10.52%
34	47,258	21,647	45.81%	25,611	54.19%	4,954	10.45%	15,653	33.01%	20,543	43.33%	6,264	13.21%
35	43,726	20,770	47.50%	22,956	52.50%	6,984	15.91%	16,092	36.66%	15,633	35.61%	5,188	11.82%
36	47,921	22,895	47.78%	25,026	52.22%	5,216	10.84%	15,132	31.46%	23,413	48.68%	4,336	9.02%
37	47,678	22,332	46.84%	25,346	53.16%	4,250	8.88%	20,265	42.34%	19,825	41.42%	3,527	7.37%
38	41,161	18,995	46.15%	22,166	53.85%	7,837	18.96%	14,229	34.42%	14,511	35.10%	4,768	11.53%
39	41,403	18,494	44.67%	22,909	55.33%	4,343	10.46%	14,905	35.89%	18,143	43.68%	4,144	9.98%
40	51,261	24,572	47.94%	26,689	52.06%	4,916	9.56%	16,432	31.94%	26,476	51.47%	3,619	7.03%
41	47,821	22,774	47.62%	25,047	52.38%	4,934	10.28%	19,911	41.47%	19,619	40.86%	3,547	7.39%
42	27,682	12,525	45.25%	15,157	54.75%	4,252	15.93%	10,345	38.76%	10,574	39.62%	1,518	5.69%
43	30,553	13,633	44.62%	16,920	55.38%	5,075	17.55%	10,409	35.99%	10,242	35.41%	3,195	11.05%
44	38,810	17,035	43.89%	21,775	56.11%	4,432	12.06%	12,456	33.89%	15,212	41.39%	4,655	12.66%
45	39,500	17,410	44.08%	22,090	55.92%	4,282	11.64%	12,537	34.07%	15,744	42.79%	4,230	11.50%
46	34,357	15,219	44.30%	19,138	55.70%	3,378	10.07%	11,150	33.24%	14,374	42.86%	4,638	13.83%
47	34,542	15,241	44.12%	19,301	55.88%	3,354	9.70%	10,637	30.76%	14,883	43.04%	5,705	16.50%
48	38,001	15,771	41.50%	22,230	58.50%	3,918	10.51%	11,246	30.16%	15,826	42.44%	6,303	16.90%
49	37,858	16,914	44.68%	20,944	55.32%	3,509	9.35%	11,130	29.65%	16,772	44.68%	6,126	16.32%
50	43,129	19,543	45.31%	23,586	54.69%	3,517	8.15%	12,484	28.95%	20,845	48.33%	6,282	14.57%
51	37,044	16,627	44.88%	20,417	55.12%	3,684	9.94%	10,827	29.21%	16,098	43.43%	6,460	17.43%
52	48,299	21,918	45.38%	26,381	54.62%	3,727	7.72%	10,449	21.63%	19,729	40.85%	14,395	29.80%
53	35,446	15,863	44.75%	19,583	55.25%	3,701	10.44%	11,028	31.12%	14,761	41.65%	5,952	16.79%
54	46,765	21,210	45.35%	25,555	54.65%	3,959	8.47%	13,541	28.96%	20,902	44.70%	8,361	17.88%
55	39,293	17,134	43.61%	22,159	56.39%	2,927	7.43%	11,594	29.42%	18,418	46.74%	6,464	16.40%
56	52,236	22,941	43.92%	29,295	56.08%	10,564	20.24%	21,645	41.47%	15,381	29.47%	4,605	8.82%
57	44,839	20,103	44.83%	24,736	55.17%	5,321	11.87%	15,479	34.52%	16,949	37.79%	7,096	15.82%
58	48,580	20,545	42.29%	28,035	57.71%	8,171	16.82%	13,567	27.92%	18,370	37.81%	8,477	17.45%
59	46,128	20,170	43.73%	25,958	56.27%	5,794	12.56%	15,088	32.71%	16,929	36.70%	8,319	18.03%
60	38,917	16,330	41.96%	22,587	58.04%	4,377	11.25%	12,874	33.08%	15,431	39.65%	6,236	16.02%
61	47,242	21,392	45.28%	25,850	54.72%	3,954	8.37%	14,516	30.73%	20,155	42.66%	8,616	18.24%
62	52,961	24,461	46.19%	28,500	53.81%	4,844	9.14%	16,492	31.13%	24,122	45.54%	7,512	14.18%
63	33,704	14,433	42.82%	19,271	57.18%	2,773	8.23%	9,712	28.82%	13,865	41.14%	7,350	21.81%
64	39,593	18,444	46.58%	21,149	53.42%	3,613	9.13%	10,514	26.56%	18,091	45.71%	7,363	18.60%
65	40,041	17,610	43.98%	22,431	56.02%	3,785	9.45%	10,939	27.31%	17,545	43.80%	7,784	19.43%
66	43,184	19,282	44.65%	23,902	55.35%	4,175	10.14%	12,311	29.89%	17,935	43.54%	6,769	16.43%
67	42,307	19,738	46.65%	22,569	53.35%	4,179	10.22%	11,605	28.37%	18,325	44.81%	6,790	16.60%
68	50,837	24,240	47.68%	26,597	52.32%	4,604	9.04%	18,002	35.34%	23,306	45.75%	5,033	9.88%
69	38,371	17,191	44.80%	21,180	55.20%	4,160	10.83%	11,473	29.88%	16,285	42.41%	6,480	16.88%
70	35,514	16,142	45.45%	19,372	54.55%	3,093	8.98%	10,406	30.22%	15,351	44.58%	5,582	16.21%
71	33,257	13,593	40.87%	19,664	59.13%	3,680	12.42%	10,983	37.06%	11,759	39.68%	3,216	10.85%
72	33,661	13,912	41.33%	19,749	58.67%	2,603	8.76%	10,072	33.91%	12,897	43.43%	4,126	13.89%
73	39,908	18,647	46.72%	21,261	53.28%	2,781	7.48%	12,070	32.48%	18,283	49.20%	4,027	10.84%
74	44,580	20,239	45.40%	24,341	54.60%	2,871	7.31%	11,704	29.80%	19,704	50.16%	5,000	12.73%
75	43,192	19,459	45.05%	23,733	54.95%	3,032	7.62%	12,971	32.61%	19,010	47.79%	4,767	11.98%
76	40,398	18,843	46.64%	21,555	53.36%	3,927	9.71%	11,606	28.71%	17,891	44.25%	7,004	17.32%

Data Source: NC State Board of Elections, December 2002

House Redistricting Plan - Voter Registration by Gender and Age

	Gender					Age							
District	Total	Male	%Male	Female	%Female	18 - 25	%18 - 25	26 - 40	%26 - 40	41 - 65	%41 - 65	66 up	%66 up
77	39,713	18,160	45.73%	21,553	54.27%	4,082	10.27%	11,471	28.85%	16,790	42.23%	7,417	18.65%
78	34,857	16,126	46.26%	18,731	53.74%	3,360	9.95%	9,675	28.65%	15,673	46.41%	5,062	14.99%
79	36,983	17,069	46.15%	19,914	53.85%	3,249	9.11%	9,832	27.56%	16,671	46.74%	5,917	16.59%
80	44,976	21,103	46.92%	23,873	53.08%	3,833	9.09%	13,593	32.22%	19,437	46.08%	5,319	12.61%
81	37,558	16,947	45.12%	20,611	54.88%	3,348	9.49%	11,150	31.60%	15,820	44.84%	4,965	14.07%
82	42,401	19,430	45.82%	22,971	54.18%	4,093	9.64%	14,060	33.11%	18,405	43.34%	5,907	13.91%
83	43,179	19,976	46.26%	23,203	53.74%	3,837	8.88%	13,473	31.18%	19,258	44.56%	6,646	15.38%
84	43,436	20,537	47.28%	22,899	52.72%	4,028	9.27%	11,719	26.98%	18,683	43.01%	9,013	20.75%
85	38,645	17,983	46.53%	20,662	53.47%	3,747	9.71%	11,023	28.56%	17,039	44.14%	6,792	17.60%
86	37,618	17,094	45.44%	20,524	54.56%	3,597	9.57%	10,383	27.61%	16,474	43.81%	7,147	19.01%
87	38,642	17,793	46.05%	20,849	53.95%	3,997	10.34%	11,321	29.28%	16,647	43.05%	6,700	17.33%
88	41,579	19,318	46.46%	22,261	53.54%	3,856	9.54%	12,274	30.35%	17,417	43.07%	6,888	17.03%
89	40,163	18,832	46.89%	21,331	53.11%	3,723	9.46%	11,800	30.00%	17,999	45.75%	5,816	14.78%
90	35,934	16,617	46.24%	19,317	53.76%	3,252	9.04%	9,256	25.73%	15,659	43.53%	7,810	21.71%
91	42,147	19,549	46.38%	22,598	53.62%	3,361	7.97%	12,384	29.37%	19,483	46.21%	6,933	16.44%
92	37,736	17,730	46.98%	20,006	53.02%	3,527	9.67%	10,368	28.42%	16,416	45.00%	6,169	16.91%
93	54,827	25,955	47.34%	28,872	52.66%	9,117	16.63%	15,748	28.72%	21,071	38.42%	8,901	16.23%
94	37,776	17,929	47.46%	19,847	52.54%	3,890	10.27%	9,810	25.91%	17,129	45.23%	7,038	18.59%
95	41,401	19,056	46.03%	22,345	53.97%	3,753	9.51%	12,433	31.49%	18,121	45.90%	5,172	13.10%
96	41,811	19,266	46.08%	22,545	53.92%	3,870	9.25%	13,360	31.95%	18,110	43.31%	6,478	15.49%
97	40,808	19,142	46.91%	21,666	53.09%	3,439	8.42%	12,101	29.64%	18,868	46.22%	6,414	15.71%
98	49,509	23,481	47.43%	26,028	52.57%	3,307	6.67%	19,707	39.78%	22,398	45.21%	4,133	8.34%
99	38,979	17,981	46.13%	20,998	53.87%	5,093	13.05%	16,541	42.38%	14,684	37.62%	2,714	6.95%
100	39,861	17,261	43.30%	22,600	56.70%	3,701	9.27%	16,249	40.71%	15,264	38.24%	4,701	11.78%
101	40,629	17,483	43.03%	23,146	56.97%	4,232	10.40%	13,803	33.92%	16,455	40.44%	6,200	15.24%
102	37,238	16,058	43.12%	21,180	56.88%	2,991	8.02%	14,586	39.11%	14,912	39.98%	4,806	12.89%
103	46,422	21,333	45.95%	25,089	54.05%	3,891	8.38%	15,400	33.16%	21,970	47.31%	5,182	11.16%
104	54,276	24,690	45.49%	29,586	54.51%	3,857	7.10%	15,899	29.27%	24,322	44.77%	10,244	18.86%
105	53,192	25,195	47.37%	27,997	52.63%	4,408	8.28%	18,003	33.81%	26,665	50.08%	4,173	7.84%
106	43,454	19,671	45.27%	23,783	54.73%	3,633	8.35%	17,496	40.21%	16,541	38.02%	5,838	13.42%
107	40,014	17,221	43.04%	22,793	56.96%	3,130	7.81%	15,121	37.75%	16,849	42.08%	4,955	12.37%
108	43,479	19,556	44.98%	23,923	55.02%	3,689	8.49%	13,312	30.64%	18,514	42.61%	7,937	18.27%
109	38,862	17,237	44.35%	21,625	55.65%	2,843	7.32%	12,171	31.33%	17,832	45.91%	5,999	15.44%
110	37,783	17,170	45.44%	20,613	54.56%	2,994	7.93%	11,252	29.79%	16,892	44.72%	6,635	17.57%
111	38,045	16,900	44.42%	21,145	55.58%	3,615	9.50%	10,744	28.24%	16,783	44.11%	6,907	18.15%
112	42,750	19,544	45.72%	23,206	54.28%	4,275	9.97%	11,613	27.10%	18,399	42.93%	8,572	20.00%
113	51,421	23,765	46.22%	27,656	53.78%	4,121	8.01%	11,323	22.00%	21,617	42.00%	14,407	27.99%
114	42,760	19,269	45.06%	23,491	54.94%	4,323	10.05%	12,413	28.85%	18,381	42.72%	7,914	18.39%
115	46,609	20,665	44.34%	25,944	55.66%	4,404	9.40%	11,709	24.98%	20,684	44.13%	10,074	21.49%
116	44,641	20,300	45.47%	24,341	54.53%	3,998	8.91%	12,236	27.26%	19,822	44.17%	8,824	19.66%
117	53,109	23,987	45.17%	29,122	54.83%	3,620	6.81%	12,272	23.09%	20,885	39.30%	16,366	30.80%
118	44,740	20,873	46.65%	23,867	53.35%	4,032	9.01%	11,454	25.59%	19,558	43.69%	9,721	21.72%
119	44,784	21,082	47.07%	23,702	52.93%	5,125	11.41%	11,755	26.17%	19,253	42.87%	8,777	19.54%
120	49,814	23,212	46.60%	26,602	53.40%	4,064	8.16%	11,338	22.77%	22,069	44.33%	12,318	24.74%
Statewide	4,991,980	2,253,260	45.14%	2,738,720	54.86%	498,129	10.07%	1,524,180	30.83%	2,133,293	43.15%	788,713	15.95%

Voter registration data is estimated since it is collected at the precinct level and districts are created at the census block level.

Data Source: NC State Board of Elections, December 2002

Dist.	2000 Auditor Campbell-Merritt				2000 Chief Justice Frye-Lake				2000 Governor Easley-Vinroot						2002 Supreme Court Butterfield-Brady				2002 US Senate Bowles-Dole								Dist.
	Dem	Dem %	Rep	Rep %	Dem	Dem %	Rep	Rep %	Dem	Dem %	Rep	Rep %	Other	Other %	Dem	Dem %	Rep	Rep %	Dem	Dem %	Rep	Rep %	Lib	Lib %	Ind	Ind %	
1	9,520	57.70%	6,978	42.30%	9,222	54.31%	7,759	45.69%	10,760	60.76%	6,538	36.92%	411	2.32%	6,827	52.71%	6,124	47.29%	7,203	50.60%	6,864	48.22%	168	1.18%	0	0.00%	1
2	11,711	57.97%	8,492	42.03%	11,235	53.86%	9,587	46.04%	13,956	62.10%	8,041	35.78%	478	2.13%	8,529	53.29%	7,476	46.71%	9,082	49.65%	8,948	48.92%	258	1.41%	4	0.02%	2
3	7,865	46.75%	8,960	53.25%	6,927	38.70%	10,973	61.30%	9,191	49.05%	9,285	49.55%	263	1.40%	6,147	41.26%	8,751	58.74%	6,210	37.63%	10,000	60.60%	291	1.76%	0	0.00%	3
4	8,749	55.83%	6,923	44.17%	7,763	47.63%	8,534	52.37%	9,132	53.68%	7,871	45.09%	210	1.23%	6,382	52.04%	5,884	47.96%	6,389	47.29%	6,870	50.85%	235	1.74%	17	0.13%	4
5	12,514	72.19%	4,821	27.81%	12,023	66.99%	5,925	33.01%	14,044	72.64%	5,002	25.94%	234	1.21%	8,957	67.01%	4,409	32.99%	9,625	65.11%	5,038	34.08%	114	0.77%	5	0.03%	5
6	10,652	50.51%	10,435	49.49%	9,441	43.21%	12,407	56.79%	12,184	53.59%	10,273	45.26%	260	1.15%	7,820	44.96%	9,574	55.04%	7,971	41.47%	10,913	56.77%	328	1.71%	10	0.05%	6
7	12,021	69.67%	5,232	30.33%	11,573	65.70%	6,041	34.30%	12,857	71.48%	4,986	27.72%	144	0.80%	8,963	65.67%	4,685	34.33%	8,908	62.04%	5,330	37.12%	119	0.83%	1	0.01%	7
8	11,674	69.12%	5,215	30.88%	10,553	60.35%	6,933	39.65%	12,741	69.45%	5,479	29.87%	125	0.68%	8,598	63.52%	4,937	36.48%	8,729	58.23%	6,113	40.78%	145	0.97%	3	0.02%	8
9	9,415	52.03%	8,682	47.97%	8,352	44.98%	10,216	55.02%	11,389	57.67%	8,191	41.47%	170	0.86%	6,648	46.17%	7,752	53.83%	6,870	42.70%	9,074	56.40%	143	0.89%	1	0.01%	9
10	8,958	51.69%	8,372	48.31%	7,498	41.68%	10,491	58.32%	9,818	51.88%	8,971	47.41%	135	0.71%	6,420	44.78%	7,916	55.22%	6,402	40.49%	9,263	58.58%	148	0.94%	0	0.00%	10
11	6,746	43.60%	8,726	56.40%	6,075	38.26%	9,804	61.74%	7,452	45.42%	8,786	53.55%	169	1.03%	4,498	38.50%	7,183	61.50%	4,272	33.78%	8,244	65.18%	117	0.93%	13	0.10%	11
12	9,974	64.69%	5,444	35.31%	9,456	58.84%	6,614	41.16%	10,904	65.23%	5,624	33.64%	189	1.13%	7,912	60.75%	5,112	39.25%	8,097	57.84%	5,727	40.91%	175	1.25%	0	0.00%	12
13	11,098	46.77%	12,630	53.23%	9,407	38.52%	15,012	61.48%	12,259	48.74%	12,484	49.64%	408	1.62%	7,771	39.69%	11,809	60.31%	8,144	39.12%	12,251	58.85%	423	2.03%	0	0.00%	13
14	5,825	47.06%	6,552	52.94%	5,230	40.96%	7,537	59.04%	6,190	46.36%	6,711	50.27%	450	3.37%	3,877	40.00%	5,815	60.00%	4,151	39.70%	6,054	57.90%	235	2.25%	16	0.15%	14
15	3,292	42.38%	4,476	57.62%	2,874	35.28%	5,272	64.72%	3,793	43.58%	4,690	53.88%	221	2.54%	2,176	35.02%	4,037	64.98%	2,471	34.94%	4,409	62.34%	184	2.60%	9	0.13%	15
16	10,092	44.01%	12,839	55.99%	8,700	41.23%	13,828	58.77%	12,853	51.73%	11,472	46.17%	522	2.10%	7,569	40.35%	11,189	59.65%	8,009	39.01%	12,161	59.23%	360	1.75%	2	0.01%	16
17	9,852	51.58%	9,250	48.42%	8,441	47.28%	10,526	52.72%	12,208	58.31%	8,332	39.80%	397	1.90%	8,341	46.35%	9,653	53.65%	8,651	44.52%	10,408	53.56%	374	1.92%	0	0.00%	17
18	11,620	66.02%	5,980	33.98%	11,365	62.91%	6,700	37.09%	12,953	69.06%	5,386	28.77%	406	2.16%	8,818	64.27%	4,903	35.73%	9,000	61.07%	5,515	37.43%	220	1.49%	1	0.01%	18
19	10,801	43.57%	14,117	56.43%	10,267	39.81%	15,521	60.19%	14,371	52.56%	12,337	45.12%	633	2.32%	8,231	39.86%	12,365	60.04%	8,830	38.46%	13,766	59.86%	361	1.57%	2	0.01%	19
20	12,287	68.85%	5,551	31.15%	11,602	62.48%	6,965	37.51%	13,893	71.84%	5,198	26.72%	259	1.33%	9,059	64.30%	5,030	35.70%	9,280	59.44%	6,112	39.15%	221	1.42%	0	0.00%	20
21	11,071	65.52%	5,827	34.48%	10,757	62.86%	6,356	37.14%	11,701	67.24%	5,541	31.84%	159	0.91%	8,491	62.93%	5,002	37.07%	8,565	60.81%	5,385	38.23%	122	0.87%	12	0.09%	21
22	10,284	60.18%	6,804	39.82%	9,698	55.38%	7,813	44.62%	11,480	61.71%	6,871	36.93%	252	1.35%	6,785	53.52%	5,893	46.48%	7,123	49.99%	6,941	48.71%	186	1.31%	0	0.00%	22
23	11,298	59.06%	7,832	40.94%	10,492	53.43%	9,146	46.57%	12,490	60.83%	7,879	38.38%	162	0.79%	8,524	56.06%	6,682	43.94%	7,971	49.51%	7,944	49.34%	184	1.14%	1	0.01%	23
24	12,529	71.61%	4,966	28.39%	12,155	68.29%	5,643	31.71%	13,413	73.30%	4,780	26.12%	108	0.58%	9,601	69.36%	4,242	30.64%	9,085	63.90%	5,036	35.42%	95	0.67%	1	0.01%	24
25	9,989	50.08%	9,957	49.92%	9,225	45.24%	11,167	54.76%	11,662	55.40%	9,231	43.85%	159	0.76%	7,448	44.51%	9,286	55.49%	7,095	40.02%	10,438	58.88%	193	1.09%	1	0.01%	25
26	10,624	50.13%	10,570	49.87%	9,775	45.47%	11,724	54.53%	11,825	53.68%	9,881	44.86%	322	1.46%	7,357	42.38%	10,001	57.62%	7,354	38.97%	11,242	59.58%	271	1.44%	2	0.01%	26
27	15,060	75.89%	4,785	24.11%	14,431	70.33%	6,087	29.67%	15,573	73.43%	5,472	25.80%	164	0.77%	10,985	69.73%	4,761	30.27%	11,180	65.08%	5,865	34.14%	129	0.75%	4	0.02%	27
28	8,881	41.21%	12,670	58.79%	8,074	36.84%	13,842	63.16%	10,128	45.20%	11,984	53.48%	297	1.33%	5,900	33.40%	11,767	66.60%	5,917	31.19%	12,792	67.43%	259	1.37%	3	0.02%	28
29	16,368	74.80%	5,514	25.20%	16,807	75.23%	5,533	24.77%	17,240	75.12%	5,382	23.45%	327	1.42%	12,613	73.94%	4,446	26.06%	12,904	71.42%	5,009	27.72%	151	0.84%	5	0.03%	29
30	11,956	62.42%	7,197	37.58%	12,165	61.73%	7,542	38.27%	12,974	63.80%	6,971	34.28%	390	1.92%	8,903	58.74%	6,254	41.26%	9,135	55.44%	7,138	43.32%	202	1.23%	1	0.01%	30
31	13,285	69.03%	5,960	30.97%	13,283	67.81%	6,306	32.19%	14,034	70.29%	5,633	28.21%	300	1.50%	10,430	69.69%	4,536	30.31%	10,441	66.04%	5,170	32.70%	194	1.23%	5	0.03%	31
32	11,058	64.89%	5,982	35.11%	10,496	59.98%	7,003	40.02%	11,358	63.34%	6,401	35.70%	172	0.96%	7,562	58.32%	5,404	41.68%	7,367	52.76%	6,454	46.22%	143	1.02%	0	0.00%	32
33	16,004	74.71%	5,418	25.29%	15,690	72.98%	5,810	27.02%	16,387	74.91%	5,230	23.91%	260	1.19%	12,092	70.74%	5,001	29.26%	12,065	68.63%	5,346	30.41%	169	0.96%	0	0.00%	33
34	14,917	51.51%	14,045	48.49%	14,514	49.55%	14,780	50.45%	16,004	52.76%	13,841	45.63%	488	1.60%	10,753	46.09%	12,575	53.91%	10,705	43.23%	13,777	55.64%	275	1.11%	6	0.02%	34
35	14,090	57.72%	10,321	42.28%	14,154	57.12%	10,624	42.88%	15,305	59.14%	9,921	38.33%	654	2.53%	10,552	54.96%	8,649	45.04%	10,656	51.73%	9,642	46.81%	298	1.45%	2	0.01%	35
36	12,460	44.65%	15,449	55.35%	12,633	44.52%	15,744	55.48%	14,982	50.23%	14,279	47.87%	567	1.90%	9,392	40.28%	13,926	59.72%	9,373	37.71%	15,150	60.95%	328	1.32%	4	0.02%	36
37	11,163	44.53%	13,908	55.47%	11,031	43.51%	14,320	56.49%	13,032	49.45%	12,785	48.51%	537	2.04%	8,661	38.46%	13,859	61.54%	8,528	36.13%	14,747	62.48%	325	1.38%	3	0.01%	37
38	14,120	65.78%	7,347	34.22%	13,818	63.79%	7,843	36.21%	14,817	68.33%	7,035	31.49%	485	2.17%	10,725	62.07%	6,554	37.93%	10,697	58.77%	7,225	39.69%	276	1.52%	4	0.02%	38
39	11,464	52.37%	10,427	47.63%	11,438	52.03%	10,547	47.97%	13,107	58.18%	9,125	40.51%	295	1.31%	9,630	50.23%	9,542	49.77%	9,521	47.64%	10,218	51.13%	243	1.22%	2	0.01%	39
40	11,751	40.74%	17,093	59.26%	11,551	39.53%	17,669	60.47%	13,934	45.86%	15,955	52.51%	493	1.62%	9,347	35.94%	16,657	64.06%	9,223	33.47%	18,031	65.43%	301	1.09%	1	0.00%	40
41	11,267	45.57%	13,456	54.43%	11,570	46.08%	13,541	53.92%	13,504	51.01%	12,508	47.25%	460	1.74%	8,811	41.53%	12,405	58.47%	8,816	38.01%	13,508	59.76%	277	1.23%	3	0.01%	41
42	6,897	69.09%	3,085	30.91%	6,913	68.61%	3,163	31.39%	7,144	70.08%	2,912	28.57%	138	1.35%	4,884	66.04%	2,512	33.96%	4,961	64.85%	2,586	33.84%	92	1.20%	0	0.00%	42
43	7,751	72.16%	2,990	27.84%	7,761	71.33%	3,119	28.67%	7,885	71.72%	2,977	27.08%	132	1.20%	5,618	69.33%	2,485	30.67%	5,799	68.87%	2,541	30.18%	80	0.95%	0	0.00%	43
44	9,167	54.11%	7,775	45.89%	9,123	52.33%	8,311	47.67%	9,696	54.28%	7,859	44.00%	307	1.72%	6,313	46.67%	7,214	53.33%	6,471	44.91%	7,751	53.79%	187	1.30%	0	0.00%	44
45	8,944	52.97%	7,941	47.03%	8,666	49.91%	8,698	50.09%	9,711	54.50%	7,848	44.05%	259	1.45%	6,165	45.99%	7,239	54.01%	6,227	43.57%	7,843	54.87%	223	1.56%	0	0.00%	45
46	7,772	61.97%	4,769	38.03%	7,467	57.08%	5,614	42.92%	8,807	62.37%	5,080	35.98%	233	1.65%	4,753	53.68%	4,101	46.32%	5,183	50.08%	5,027	48.57%	137	1.32%	2	0.02%	46
47	10,875	76.87%	3,272	23.13%	10,471	72.78%	3,914	27.21%	11,392	76.14%	3,348	22.38%	222	1.48%	6,218	68.63%	2,842	31.37%	6,107	62.58%	3,575	36.63%	77	0.79%	0	0.00%	47
48	11,080	81.60%	2,499	18.40%	10,781	77.36%	3,155	22.64%	11,865	79.93%	2,816	18.97%	163	1.10%	6,749	75.46%	2,195	24.54%	7,398	70.71%	2,776	26.53%	88	0.84%	200	1.91%	48
49	11,177	58.54%	7,915	41.46%	10,265	52.70%	9,213	47.30%	12,009	60.22%	7,683	38.53%	249	1.25%	8,747	53.65%	7,556	46.35%	8,758	49.91%	8,470	48.27%	315	1.80%	3	0.02%	49
50	12,132	57.61%	8,926	42.39%	12,492	57.27%	9,321	42.73%	13,259	58.65%	8,962	39.64%	386	1.71%	9,876	55.81%	7,819	44.19%	10,089	52.81%	8,731	45.70%	278	1.46%	6	0.03%	50
51	8,673	53.67%	7,486	46.33%	8,301	50.09%	8,271	49.91%	9,456	54.58%	7,812	43.93%	258	1.49%	6,181	45.30%	7,463	54.70%	6,381	43.23%	8,154	55.25%	212	1.44%	12	0.08%	51
52	9,934	41.56%	13,969	58.44%	10,448	42.62%	14,065	57.38%	11,481	44.84%	13,891	54.25%	234	0.91%	7,017	34.75%	13,178	65.25%	7,720	34.83%	14,167	63.92%	273	1.23%	2	0.01%	52
53	8,847	51.43%	8,356	48.57%	8,161	46.39%	9,433	53.61%	9,567	53.22%	8,182	45.51%	229	1.27%	6,148	42.69%	8,185	57.11%	6,019	39.64%	8,924	58.77%	230	1.51%	12	0.08%	53
54	13,789	59.66%	9,325	40.34%	13,912	58.76%	9,764	41.24%	14,593	59.81%	9,316	38.18%	489	2.00%	11,863	57.58%	8,813	42.42%	12,282	54.87%	9,769	43.64%	331	1.48%	3	0.01%	54
55	11,350	59.60%	7,693	40.40%	11,441	58.22%	8,211	41.78%	12,484	61.32%	7,586	37.26%	289	1.42%	7,880	54.74%	6,524	45.26%	8,065	50.55%	7,667	48.05%	221	1.39%	2	0.01%	55
56	14,460	73.05%	5,336	26.95%	15,186	74.79%	5,121	25.21%	15,351	72.74%	5,155	24.43%	597	2.83%	11,979	75.25%	3,940	24.75%	12,392	73.00%	4,394	25.88%	177	1.04%	13	0.08%	56
57	11,143	55.70%	8,861	44.30%	12,455	59.67%	8,417	40.33%	12,403	57.99%	8,531	39.89%	453	2.12%	8,988	52.34%	8,185	47.66%	9,367	51.10%	8,734	47.65%	230	1.25%	0	0.00%	57
58	14,856	68.18%	6,933	31.82%	15,778	70.21%	6,694	29.79%	15,702	69.06%	6,740	29.64%	298	1.30%	12,341	65.69%	6,447	34.31%	12,698	65.01%	6,846	34.03%	187	0.96%	0	0.00%	58
59	11,682	56.54%	8,981	43.46%	13,461	61.91%	8,281	38.09%	12,951	58.19%	8,842	39.73%	484	2.08%	9,533	52.98%	8,462	47.02%	10,027	51.79%	9,075	46.88%	258	1.33%	0	0.00%	59
60	12,239	68.21%	5,705	31.79%	12,880	69.99%	5,527	30.01%	12,901	69.31%	5,467	29.37%	246	1.32%	9,551	67.07%	4,689	32.93%	9,769	66.20%	4,819	32.66%	168	1.14%	0	0.00%	60
61	8,207	41.76%	11,448	58.24%	9,268	45.10%	11,280	54.90%	9,733	46.06%	11,000	52.05%	399	1.89%	6,941	36.48%	12,085	63.52%	7,258	35.57%	12,889	63.16%	259	1.27%	0	0.00%	61
62	10,302	42.30%	14,054	57.70%	12,101	47.36%	13,451	52.64%	12,517	47.19%	13,508	50.93%	499	1.88%	9,081	38.83%	14,305	61.17%	9,612	38.14%	15,261	60.56%	328	1.30%	0	0.00%	62
63	9,185	56.61%	7,039	43.39%	9,876	58.30%	7,063	41.70%	10,022	57.82%	7,068	40.76%	248	1.42%	6,381	50.42%	6,275	49.58%	6,742	50.68%	6,321	47.52%	228	1.71%	11	0.08%	63
64	7,201	38.19%	11,653	61.81%	8,324	41.96%	11,516	58.04%	8,405	40.83%	11,832	57.48%	348	1.69%	4,536	29.70%	10,737	70.30%	5,301	31.82%	11,091	66.57%	264	1.58%	5	0.03%	64

Data Source: NC State Board of Elections, November 2000 and 2002

House Redistricting Plan - Election Results

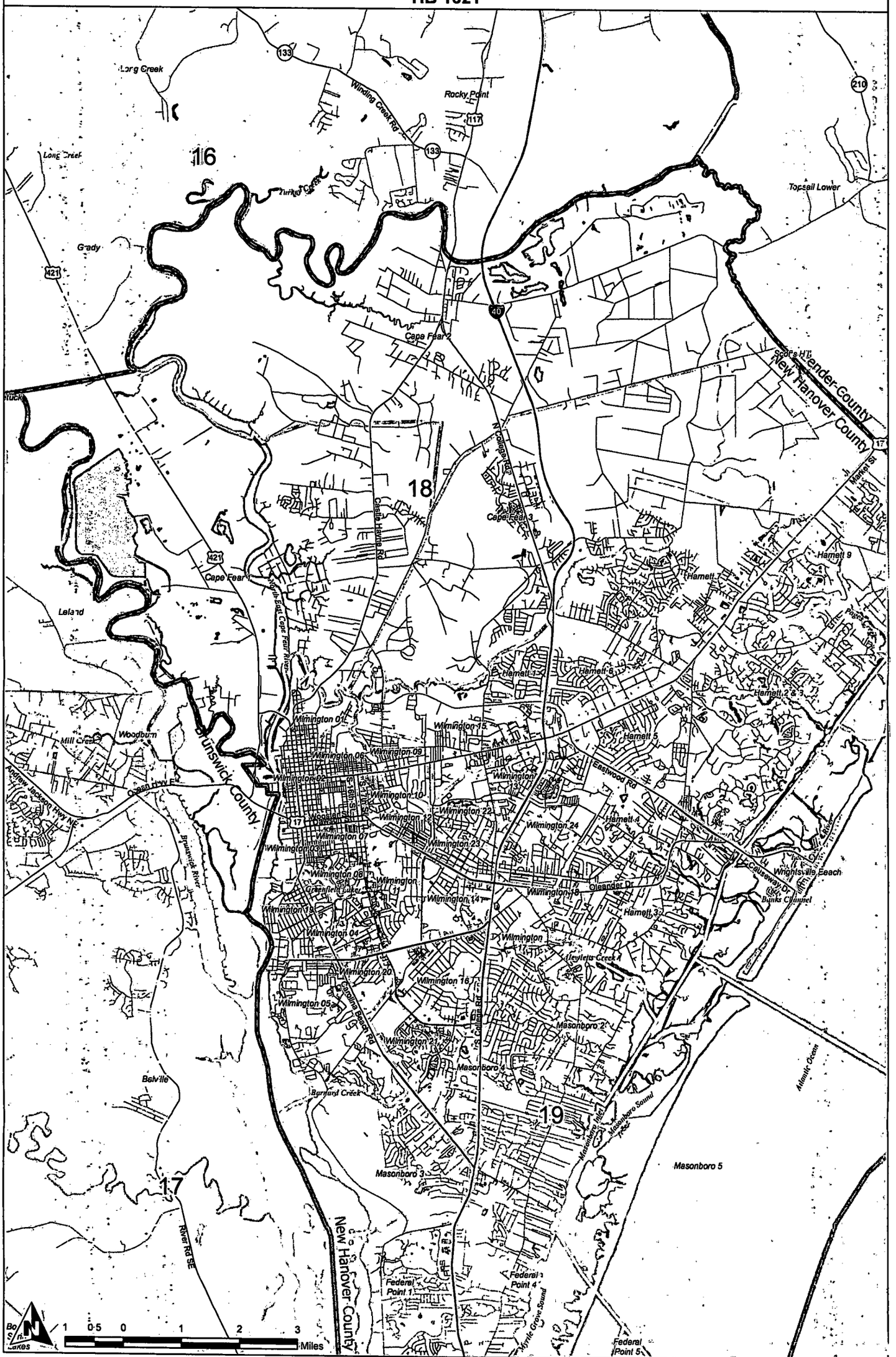
Dist.	2000 Auditor Campbell-Merritt				2000 Chief Justice Frye-Lake				2000 Governor Easley-Vinroot						2002 Supreme Court Butterfield-Brady				2002 US Senate Bowles-Dole						Dist.
	Dem	Dem %	Rep	Rep %	Dem	Dem %	Rep	Rep %	Dem	Dem %	Rep	Rep %	Other	Other %	Dem	Dem %	Rep	Rep %	Dem	Dem %	Rep	Rep %	Lib	Lib %	Ind	Ind %	
65	10,787	54.06%	9,168	45.94%	11,345	54.11%	9,621	45.89%	11,944	55.43%	9,253	42.94%	351	1.63%	7,685	48.01%	8,323	51.99%	8,520	47.84%	8,875	49.83%	413	2.32%	2	0.01%	65
66	11,714	63.82%	6,640	36.18%	12,454	65.29%	6,622	34.71%	12,259	59.81%	6,680	32.59%	1,559	7.81%	8,656	60.92%	5,553	39.08%	8,765	57.54%	6,203	40.72%	281	1.71%	3	0.02%	66
67	8,423	39.42%	12,944	60.58%	8,486	38.04%	13,825	61.96%	9,279	39.58%	13,798	58.85%	368	1.57%	6,441	36.12%	11,393	63.88%	6,873	35.00%	12,383	63.06%	381	1.94%	0	0.00%	67
68	6,446	31.21%	14,205	68.79%	6,703	31.72%	14,432	68.28%	7,140	31.64%	14,990	66.44%	433	1.92%	4,708	26.51%	13,048	73.49%	5,690	28.36%	14,060	70.09%	311	1.55%	0	0.00%	68
69	9,117	60.31%	6,000	39.69%	8,954	57.36%	6,656	42.64%	9,333	56.80%	6,786	41.37%	284	1.73%	6,450	55.56%	5,159	44.44%	7,170	54.69%	5,784	44.12%	156	1.19%	0	0.00%	69
70	6,468	35.03%	11,995	64.97%	6,938	36.57%	12,032	63.43%	7,837	40.48%	11,199	57.85%	324	1.67%	4,091	29.63%	9,715	70.37%	4,605	31.65%	9,684	66.55%	261	1.79%	1	0.01%	70
71	11,503	70.53%	4,806	29.47%	11,630	69.74%	5,047	30.26%	12,069	71.16%	4,553	26.84%	339	2.00%	8,216	69.05%	3,683	30.95%	9,004	68.58%	3,945	30.05%	179	1.36%	2	0.02%	71
72	11,870	67.67%	5,718	32.33%	12,079	66.39%	6,116	33.61%	12,549	67.77%	5,713	30.85%	256	1.38%	8,433	65.63%	4,416	34.37%	9,565	65.67%	4,862	33.38%	138	0.95%	0	0.00%	72
73	6,802	32.52%	14,114	67.48%	6,923	32.12%	14,632	67.88%	8,438	37.95%	13,345	60.01%	454	2.04%	4,577	28.72%	12,553	73.28%	5,212	27.90%	13,148	70.39%	312	1.67%	6	0.03%	73
74	11,005	43.10%	14,527	56.90%	11,028	41.37%	15,630	58.63%	12,352	44.71%	14,755	53.41%	517	1.87%	7,788	37.89%	12,764	62.11%	8,885	38.32%	13,988	60.33%	309	1.33%	3	0.01%	74
75	9,812	40.12%	14,347	59.88%	9,488	38.37%	15,239	61.63%	11,165	43.52%	13,992	54.55%	495	1.93%	6,619	34.40%	12,621	65.60%	7,462	35.25%	13,410	63.36%	289	1.37%	5	0.02%	75
76	6,199	32.28%	13,008	67.72%	6,224	31.60%	13,473	68.40%	6,885	33.83%	12,976	63.94%	453	2.23%	4,138	27.96%	10,663	72.04%	4,391	27.34%	11,303	70.37%	365	2.27%	4	0.02%	76
77	8,882	50.57%	8,683	49.43%	8,919	49.36%	9,148	50.64%	9,440	50.75%	8,849	47.58%	311	1.67%	6,494	45.65%	7,732	54.35%	6,542	42.18%	8,666	55.87%	301	1.94%	1	0.01%	77
78	5,274	30.22%	12,179	69.78%	5,712	31.81%	12,247	68.19%	6,632	36.20%	11,422	62.35%	268	1.45%	3,371	25.51%	9,844	74.49%	3,870	27.67%	9,855	70.47%	260	1.86%	0	0.00%	78
79	7,598	38.52%	12,125	61.48%	7,474	36.63%	12,929	63.37%	8,589	40.95%	11,964	57.04%	422	2.01%	4,984	32.06%	10,518	67.94%	5,353	32.36%	10,893	65.84%	276	1.67%	22	0.13%	79
80	6,691	31.33%	14,667	68.67%	6,983	31.80%	14,975	68.20%	8,343	38.95%	13,845	61.32%	389	1.72%	5,021	27.50%	13,239	72.50%	5,722	28.73%	13,735	68.97%	456	2.29%	2	0.01%	80
81	8,808	52.82%	7,854	47.18%	8,908	51.43%	8,414	48.57%	9,735	54.84%	7,740	43.60%	277	1.56%	6,838	48.35%	7,305	51.65%	7,537	48.70%	7,531	48.67%	408	2.62%	1	0.01%	81
82	7,812	41.40%	11,059	58.60%	7,842	40.21%	11,661	59.79%	8,269	40.52%	11,766	57.66%	372	1.82%	5,485	35.92%	9,801	64.08%	5,987	35.89%	10,399	62.55%	256	1.54%	2	0.01%	82
83	8,176	39.54%	12,502	60.46%	8,084	37.84%	13,282	62.16%	8,533	38.32%	13,292	59.69%	444	1.99%	5,735	34.16%	11,054	65.84%	6,165	34.01%	11,602	64.00%	362	2.00%	0	0.00%	83
84	7,369	37.40%	12,335	62.60%	7,261	35.67%	13,086	64.33%	8,425	39.11%	12,622	58.59%	485	2.30%	5,513	34.33%	10,544	65.67%	6,578	37.64%	10,603	60.67%	289	1.65%	7	0.04%	84
85	6,988	41.73%	9,757	58.27%	6,366	37.04%	10,823	62.96%	7,530	42.46%	9,854	55.57%	349	1.97%	5,116	36.97%	8,722	63.03%	5,958	39.15%	8,927	58.66%	298	1.95%	36	0.24%	85
86	8,526	49.40%	8,733	50.60%	8,205	46.06%	9,607	53.94%	8,702	48.68%	8,805	49.46%	295	1.66%	6,748	44.11%	8,549	55.89%	7,535	44.97%	8,823	52.66%	379	2.26%	17	0.10%	86
87	6,752	40.34%	9,984	59.66%	6,374	37.20%	10,759	62.80%	7,339	41.77%	9,763	55.56%	470	2.67%	4,382	33.00%	8,858	67.00%	5,254	37.24%	8,498	60.23%	335	2.37%	23	0.16%	87
88	8,121	39.95%	12,207	60.05%	7,940	38.32%	12,782	61.68%	8,572	40.66%	12,172	57.74%	336	1.59%	6,055	37.05%	10,288	62.95%	6,895	38.03%	10,576	60.07%	312	1.77%	22	0.12%	88
89	6,791	35.83%	12,165	64.17%	6,403	33.09%	12,946	66.91%	7,514	37.96%	11,842	60.33%	340	1.72%	4,594	31.19%	10,134	68.81%	5,075	32.14%	10,377	65.72%	336	2.13%	2	0.01%	89
90	7,694	46.18%	8,967	53.82%	7,673	44.99%	9,381	55.01%	8,446	47.91%	8,950	50.77%	233	1.32%	5,779	44.33%	7,258	55.67%	6,038	42.72%	7,790	55.12%	301	2.13%	4	0.03%	90
91	9,415	40.83%	13,644	59.17%	9,675	40.67%	14,115	59.33%	11,044	45.13%	13,006	53.15%	420	1.72%	6,641	36.86%	11,378	63.14%	7,214	37.12%	11,738	60.40%	476	2.45%	6	0.03%	91
92	6,928	33.30%	13,875	66.70%	6,687	31.27%	14,698	68.73%	8,022	38.47%	13,616	61.80%	359	1.63%	4,610	27.94%	11,888	72.06%	5,140	29.01%	12,144	68.54%	425	2.40%	8	0.05%	92
93	9,332	45.95%	10,975	54.05%	9,188	43.97%	11,710	56.03%	10,392	47.02%	10,995	49.74%	716	3.24%	7,277	41.86%	10,087	58.04%	7,942	41.72%	10,680	56.11%	406	2.13%	7	0.04%	93
94	6,741	35.07%	12,480	64.93%	6,716	34.75%	12,613	65.25%	8,561	41.52%	11,768	57.07%	290	1.41%	5,546	34.19%	10,675	65.81%	6,217	35.91%	10,691	61.75%	399	2.30%	6	0.03%	94
95	8,241	40.72%	11,996	59.28%	8,130	39.23%	12,594	60.77%	8,783	40.83%	12,325	57.43%	372	1.73%	5,540	36.06%	9,825	63.94%	5,857	35.80%	10,255	62.68%	247	1.51%	3	0.02%	95
96	6,756	35.81%	12,111	64.19%	6,621	34.43%	12,611	65.57%	7,580	38.68%	11,622	59.32%	390	1.99%	4,429	30.98%	9,866	69.02%	5,211	33.99%	9,811	63.99%	311	2.03%	0	0.00%	96
97	8,184	42.36%	11,137	57.64%	7,800	39.21%	12,091	60.79%	8,610	41.70%	11,642	56.39%	395	1.91%	6,537	37.84%	10,738	62.16%	6,804	36.91%	11,195	60.72%	433	2.35%	4	0.02%	97
98	7,679	38.77%	12,125	61.23%	8,166	40.23%	12,132	59.77%	8,296	38.26%	13,012	60.01%	376	1.73%	7,044	37.75%	11,617	62.25%	7,919	38.50%	12,373	60.16%	274	1.33%	2	0.01%	98
99	9,058	58.64%	6,389	41.36%	9,343	59.48%	6,362	40.51%	9,410	57.08%	6,789	41.18%	287	1.74%	7,632	59.54%	5,187	40.46%	8,122	58.88%	5,482	39.74%	188	1.36%	3	0.02%	99
100	9,630	61.60%	6,003	38.40%	9,869	61.70%	6,125	38.30%	9,768	58.22%	6,687	39.86%	322	1.92%	6,561	59.27%	4,509	40.73%	7,069	58.51%	4,823	39.92%	186	1.54%	3	0.02%	100
101	11,569	69.28%	5,131	30.72%	11,696	68.47%	5,385	31.53%	11,693	65.96%	5,812	32.78%	223	1.26%	9,732	69.08%	4,357	30.92%	10,316	67.78%	4,728	31.07%	174	1.14%	1	0.01%	101
102	11,417	76.26%	3,555	23.74%	11,843	76.10%	3,656	23.90%	11,406	71.65%	4,231	26.58%	283	1.78%	8,730	74.64%	2,966	25.36%	9,320	73.73%	3,162	25.01%	159	1.26%	0	0.00%	102
103	8,535	40.43%	12,577	59.57%	8,749	40.41%	12,899	59.59%	8,943	38.88%	13,676	59.45%	385	1.67%	6,649	38.01%	10,845	61.99%	7,386	38.59%	11,498	60.07%	255	1.33%	2	0.01%	103
104	8,497	37.80%	13,979	62.20%	9,090	38.88%	14,292	61.12%	8,421	33.62%	16,277	64.98%	353	1.41%	7,043	34.89%	13,143	65.11%	8,530	37.30%	14,096	61.64%	236	1.03%	7	0.03%	104
105	7,043	32.47%	14,650	67.53%	7,534	34.02%	14,610	65.98%	7,336	31.10%	15,888	67.35%	366	1.55%	5,801	29.84%	13,637	70.16%	6,740	31.73%	14,254	67.10%	248	1.17%	1	0.00%	105
106	10,017	58.85%	7,005	41.15%	10,337	59.08%	7,161	40.92%	9,973	53.68%	8,284	44.59%	320	1.72%	7,955	57.62%	5,852	42.38%	8,847	57.55%	6,340	41.24%	185	1.20%	2	0.01%	106
107	10,556	66.53%	5,311	33.47%	10,693	66.31%	5,433	33.69%	10,688	63.76%	5,843	34.86%	231	1.38%	8,277	66.90%	4,096	33.10%	8,645	65.88%	4,318	32.91%	157	1.20%	1	0.01%	107
108	7,384	36.26%	12,947	63.74%	7,253	34.76%	13,615	65.24%	7,997	36.70%	13,384	61.46%	401	1.84%	4,958	33.82%	9,700	66.18%	5,302	32.83%	10,587	65.55%	260	1.61%	1	0.01%	108
109	7,305	41.91%	10,125	58.09%	7,264	40.71%	10,578	59.29%	7,771	42.13%	10,375	56.24%	301	1.63%	5,158	40.39%	7,614	59.61%	5,387	38.87%	8,262	59.62%	209	1.51%	0	0.00%	109
110	7,547	42.16%	10,352	57.84%	7,271	39.33%	11,215	60.67%	8,339	43.10%	10,669	55.15%	339	1.75%	5,078	38.32%	8,172	61.68%	5,468	38.88%	9,064	61.14%	280	1.86%	3	0.02%	110
111	9,366	51.57%	8,798	48.43%	9,119	48.80%	9,569	51.20%	10,146	51.77%	9,190	46.89%	262	1.34%	6,881	47.79%	7,517	52.21%	7,170	44.93%	8,554	53.60%	230	1.44%	5	0.03%	111
112	8,817	47.47%	9,755	52.53%	8,242	42.88%	10,980	57.12%	9,766	48.67%	9,887	49.18%	431	2.15%	6,546	42.86%	8,726	57.14%	6,910	41.75%	9,386	56.78%	243	1.47%	0	0.00%	112
113	8,181	39.92%	12,312	60.08%	7,997	38.23%	12,923	61.77%	8,976	40.68%	12,432	56.35%	653	2.96%	6,753	38.36%	10,851	61.64%	7,615	39.85%	11,250	58.87%	243	1.27%	1	0.01%	113
114	11,052	54.48%	9,235	45.52%	10,870	52.53%	9,821	47.47%	12,036	54.40%	9,236	41.74%	855	3.86%	8,718	53.83%	7,478	46.17%	9,652	54.50%	7,800	44.05%	257	1.45%	0	0.00%	114
115	11,663	52.98%	10,349	47.02%	11,447	51.09%	10,959	48.91%	12,766	53.75%	10,183	42.87%	803	3.38%	9,487	51.64%	8,883	48.36%	10,459	52.36%	9,303	46.57%	214	1.07%	0	0.00%	115
116	8,751	43.51%	11,361	56.49%	8,314	40.56%	12,183	59.44%	9,865	45.26%	11,344	52.05%	585	2.68%	6,671	40.56%	9,776	59.44%	7,634	42.51%	10,134	56.43%	180	1.06%	0	0.00%	116
117	7,971	36.68%	13,762	63.32%	7,727	36.71%	13,322	63.29%	9,732	41.18%	13,455	56.94%	443	1.87%	5,500	32.36%	11,494	67.64%	6,944	38.57%	11,848	62.39%	186	1.03%	1	0.01%	117
118	11,200	56.19%	8,732	43.81%	10,462	51.80%	9,733	48.20%	12,013	56.07%	8,954	41.78%	459	2.14%	8,578	52.27%	7,834	47.73%	9,763	52.70%	8,486	45.81%	271	1.46%	6	0.03%	118
119	10,236	54.55%	8,530	45.45%	9,823	51.56%	9,228	48.44%	10,862	54.16%	8,801	43.48%	477	2.36%	7,216	52.69%	6,480	47.31%	8,091	51.53%	7,383	47.02%	226	1.44%	2	0.01%	119
120	8,417	42.69%	11,301	57.31%	8,240	41.35%	11,887	58.65%	9,287	44.07%	11,353	53.87%	434	2.06%	7,144	41.67%	9,998	58.33%	7,895	41.11%	11,068	57.64%	239	1.24%	1	0.01%	120
State	1,175,142	51.15%	1,122,504	48.85%	1,161,674	49.25%	1,196,963	50.75%	1,293,171	52.68%	1,118,135	45.55%	43,630	1.78%	874,496	46.80%	994,184	53.20%	922,641	45.51%	1,073,979	52.98%	29,851	1.47%	656	0.03%	State

Election data is estimated since it is collected at the precinct level and districts are created at the census block level.

Data Source: NC State Board of Elecli[illegible]ovember 2000,and 2002

Attachment V

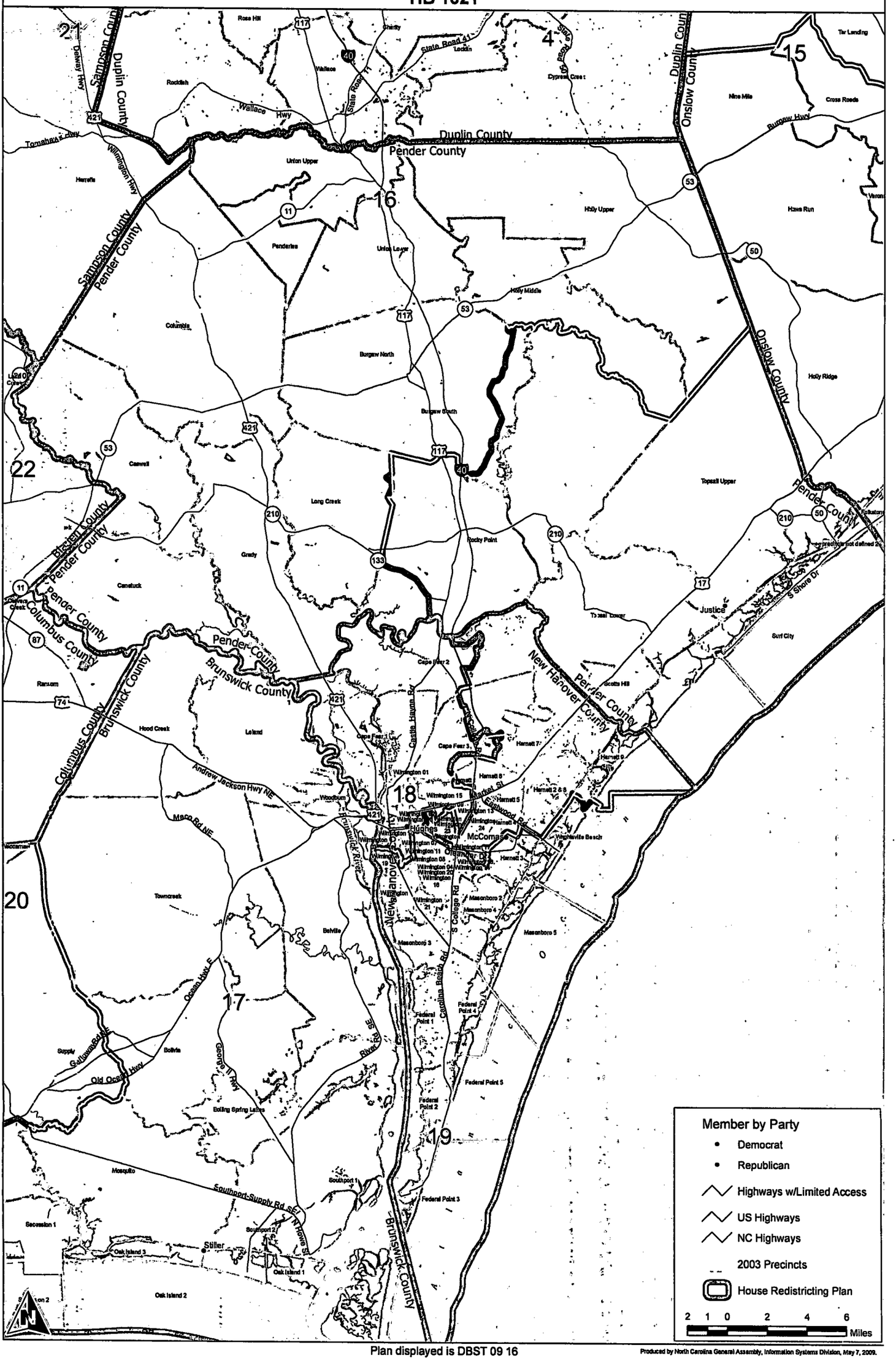
HB 1621



Plan displayed is DBST 09 16

Produced by North Carolina General Assembly, Information Systems Division. May 7, 2009.

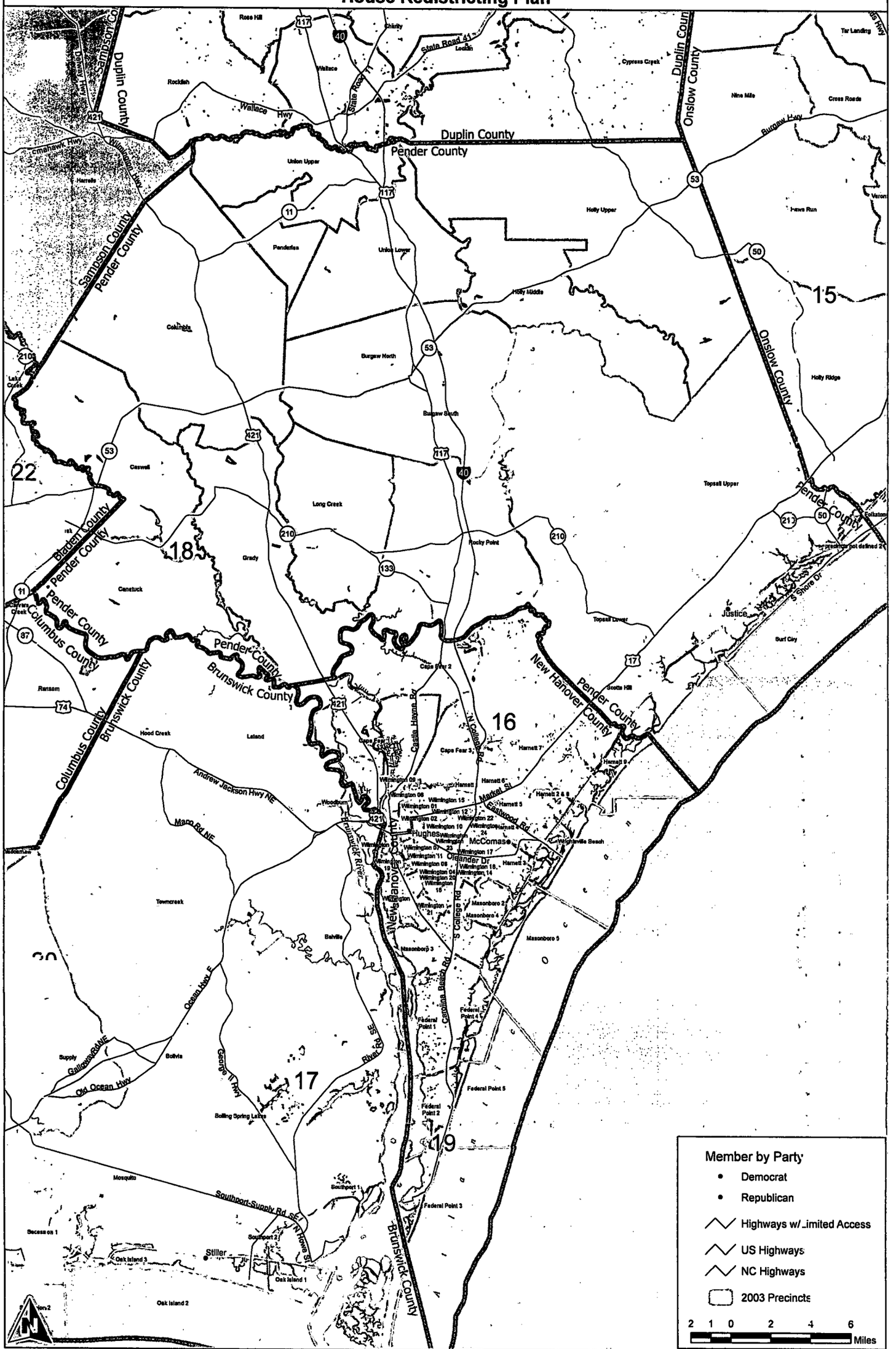
HB 1621



Plan displayed is DBST 09 16

Produced by North Carolina General Assembly, Information Systems Division, May 7, 2009.

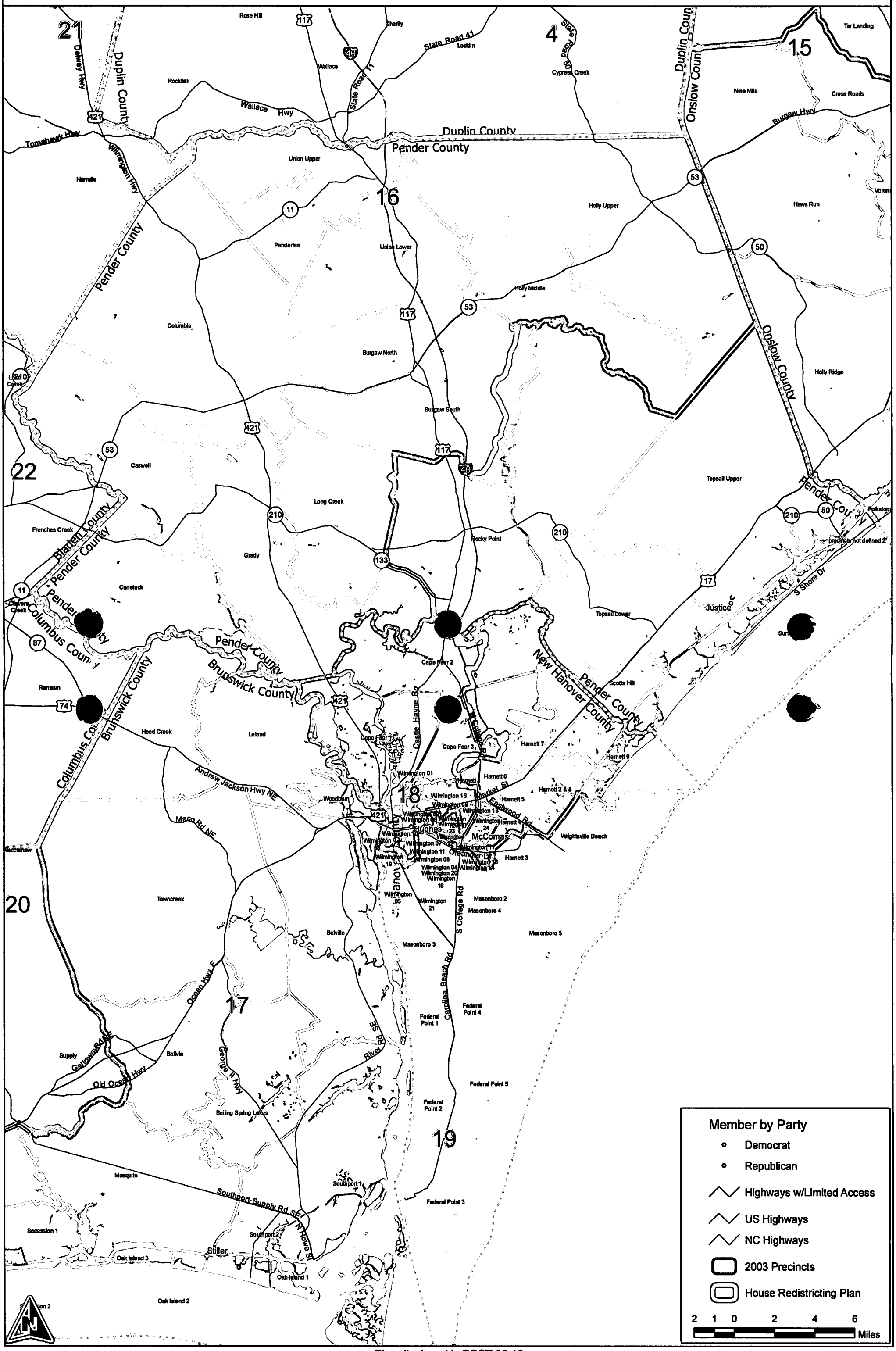
House Redistricting Plan



Plan displayed is House Redistricting Plan of 2003

Produced by North Carolina General Assembly, Information Systems Division, May 7, 2009.

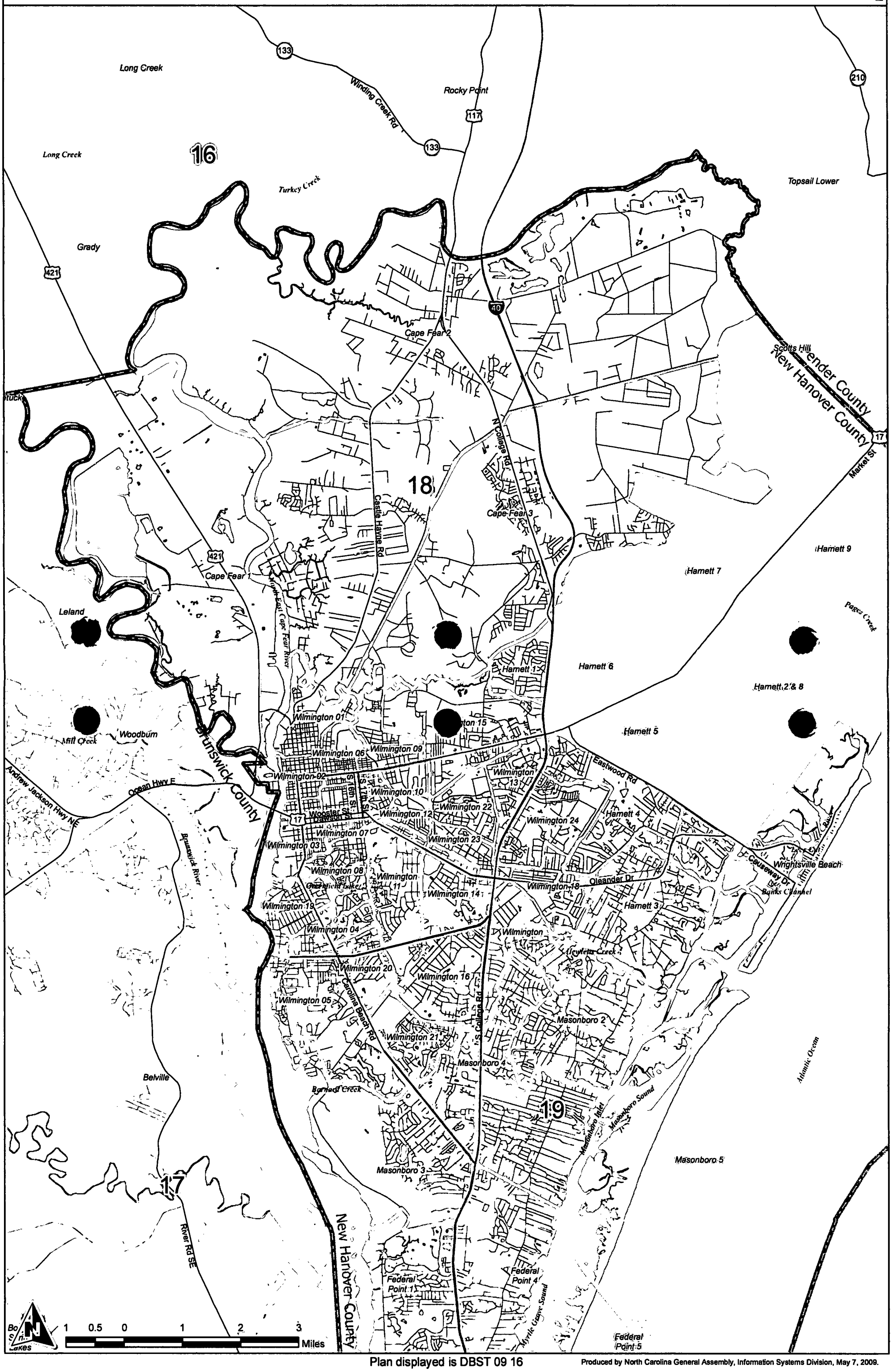
HB 1621



Plan displayed is DBST_09 16

Produced by North Carolina General Assembly, Information Systems Division, May 7, 2009.

HB 1621



Plan displayed is DBST 09 16

Produced by North Carolina General Assembly, Information Systems Division, May 7, 2009.

Attachment VI

THE GENERAL ASSEMBLY OF THE STATE OF NORTH CAROLINA

SENATE JUDICIARY I COMMITTEE

MEETING

TRANSCRIPT OF THE PROCEEDINGS

June 4, 2009

COMMITTEE MEMBERS PRESENT:

Sen. Martin Nesbitt, Chair
Sen. Dan Clodfelter, Vice-Chair
Sen. Josh Stein, Vice-Chair
Sen. Andrew Brock
Sen. David Hoyle
Sen. Clark Jenkins
Sen. Ellie Kinnaird
Sen. Floyd McKissick
Sen. R.C. Soles
Sen. Jerry Tillman

COPY

In Raleigh, N.C.
10:00 A.M.

Reported by:
Katherine M. Becker

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COMMITTEE STAFF

Ms. Erika Churchill
Mr. Bill Patterson
Mr. Giles Perry

Ms. Janette Lee, Committee Clerk
Ms. Jessica Bennett, Committee Clerk

THE CHAIR: We'll move to the redistricting bill now, and I'm going to let our staff direct traffic on this, because--if--if you will--Erika, if you could, kind of tell the committee what we're going to be doing and when we'll be doing it.

MS. CHURCHILL: Okay. Thank you, Mr. Chair. The bill is House Bill 1621. You should have before you three maps, all in color. The first is entitled "House Redistricting Plan." This is the current existing districts for the cluster that contains Pender and New Hanover County in the House plan. As you will see from that map, Pender County is split down the middle between District 16, which is represented by Carolyn Justice East, and District 18, which is represented by Representative Spaulding Hughes, both of whom are sitting in the back of the committee room.

Then the next two maps are--should have at the title--at the top of them "House Bill 1621." One is a map of both Pender and New Hanover County. And because New Hanover County has the interesting geography that it does, the second one is a blowup of New Hanover County so that the members can see

how New Hanover County is split. House Bill 1621 does keep Pender County whole.

The reason that this bill is before the General Assembly is because the U.S. Supreme Court affirmed a decision of the North Carolina Supreme Court stating the Pender and New Hanover County cluster needed to be redrawn because District 18 was not a Section 2 of the Voting Rights Acts district because the voting-age population was not above fifty percent black. That is a new precedent for all of the United States to follow in the next round of redistricting.

You should also have before you two stat packs. One is the House Redistricting Plan. The first page is titled, "House Redistricting Plan: Ideal versus Actual Population." The second one is entitled "House Bill 1621: Ideal versus Actual Populations." This contains all of the information for all of the districts in both plans. However, please note that House Bill 1621 only affects two districts, and they are House District 16 and House District 18.

The bill was sponsored by Representative Grier Martin, and I believe he is here and ready to

talk about the bill.

THE CHAIR: Okay. Let me do a little bit of housekeeping here. Number one, Members, now, remember, everything we say here today is being recorded. And I've just got to tell you that because that's unusual for this committee.

Tell me again why I've got two maps entitled "House Bill 1621" that are different.

MS. CHURCHILL: Mr. Chair, the first one is--the map itself shows all of Pender and all of New Hanover Counties. Pender and New Hanover are the cluster that were put together in the House map in 2003, and has been applied since then. The opinion deals with just that cluster, and that is the opinion of the North Carolina Supreme Court--

THE CHAIR: Now, I didn't follow--

MS. CHURCHILL: I'm sorry.

THE CHAIR: I'm sorry. Which--which map shows the two counties? Is that this one?

MS. CHURCHILL: Yes, sir. That is the one that has the large blue area that is--

THE CHAIR: Large blue and large pink are the two counties separated?

MS. CHURCHILL: Yes, sir.

THE CHAIR: Okay.

MS. CHURCHILL: The large pink area is actually Brunswick County. But the large blue area is Pender County, showing that Pender County is kept whole under the plan put forward in House Bill 1621. The second map that is entitled "House Bill 1621" is a blowup of the area in New Hanover County so that folks can see how New Hanover County has been split.

THE CHAIR: Now, I'm probably the only one in the room that doesn't get this. I thought we were--

SEN. HOYLE: No, I'm sure you're not.

THE CHAIR: I thought we were not splitting them.

MS. CHURCHILL: Mr. Chair--if I might--

THE CHAIR: Yes, ma'am.

MS. CHURCHILL: The lawsuit was about Pender County. They filed suit saying that the House Redistricting Plan of 2003 violated the Whole County Provision--

THE CHAIR: Okay.

MS. CHURCHILL: --of the North Carolina Constitution. The State put forward that Pender

County was split to comply with Section 2 of the Voting Rights Act.

The North Carolina Supreme Court found that the criteria for complying with Section 2 of the Voting Rights Act was that, first of all, to qualify, you had to have a voting-age population within the district that was more than fifty percent black if you were going to draw a Section 2 Voting Rights Act under the Gingles test, or Gingles test, choosing your pronunciation.

The North Carolina Supreme Court said that District 18, which was the Section 2 district at issue, needed to be redrawn. That opinion was appealed to the U.S. Supreme Court, and the U.S. Supreme Court affirmed the decision of the North Carolina Supreme Court. In essence, the decision was that Pender County should have been kept whole under the Whole County Provision. House Bill 1621 does that in what it has put forward.

However, because the total population of Pender County is not enough to be a complete district in the House, which is roughly sixty-seven thousand people, some portion of New Hanover had to be put with it. The blowup map shows how New

Hanover is split to get District 16, which is all of Pender County, up to the minimum ideal population or within plus or minus five percent of that.

THE CHAIR: Okay. And it's all right to split New Hanover County because it was already split, or because it's a Voting Rights county, or neither?

SEN. CLODFELTER: Because it's too large to be--

MS. CHURCHILL: Yes, sir. If you'd like for me to try that one, under the Stephenson opinion, which is the North Carolina Supreme Court opinion that interprets the Whole County Provision of the North Carolina constitution, first of all you draw any Voting Rights Act districts; then you decide which counties are wholly within themselves enough to contain ideal populations for a House district or a Senate district; then once you've identified those counties and the Voting Rights Act, you start with the rest of the state, and you start clustering the counties together to create the smallest number of counties put together to create ideal districts or a cluster.

It's a little complicated, but in essence, where the House ended up doing its clustering in 2003 placed Pender and New Hanover together in a cluster because neither were of an ideal population to sustain a district within itself. New Hanover had too much population. Pender had too little. So between the two of them they did create an ideal population for a cluster.

So you--in order to make the district from Pender enough to meet the ideal population, we had to take in some from New Hanover.

THE CHAIR: Thank you. Now I've got it, and the rest of you can work on it. Senator Soles?

SEN. SOLES: I was just going to comment. This arises down in Pender County, that I represent in the Senate, and at one time I represented New Hanover County, and I still represent Pender--I mean, Brunswick that's shown on the map. But I wanted to ask the staff, if I understand it right, the criteria set out by the North Carolina Supreme Court that was affirmed by the U.S. Supreme Court sets out a new condition or criteria that has to be followed that we did not think was there to begin with; is that correct?

MS. CHURCHILL: Mr. Chair, if I might--

THE CHAIR: Yes.

MS. CHURCHILL: Senator Soles is absolutely correct.

THE CHAIR: Okay.

SEN. SOLES: So just to follow up--

THE CHAIR: Senator Soles?

SEN. SOLES: When we--when we drew the maps the first time, we thought we were following the law and were within the law, and it turns out that that was not correct, but no one realized it. And now a new criteria has been set out that will be followed nationwide; is that correct?

MS. CHURCHILL: I believe so.

THE CHAIR: Now, the only--let me ask a question on that point, because we're having to follow this criteria because our state constitution has a provision that you will keep counties whole. So why would that apply nationally unless they had such a provision in their state constitutions?

MS. CHURCHILL: Mr. Chair, the test which Senator Soles referred to is actually a condition of the Gingles test, which is about drawing Section 2 of the Voting Rights Act

districts. The Whole County Provision--the North Carolina Supreme Court case that interprets that is referred--is *Stephenson v. Bartlett*. That opinion simply says that we comply with the federal law first, then we go to the Whole County Provision, and it sets forth criteria of how we comply with the Whole County Provision.

THE CHAIR: Right. But the Whole County Provision is in our State constitution.

MS. CHURCHILL: Yes, sir.

THE CHAIR: That's not a federal rule.

MS. CHURCHILL: No, sir.

THE CHAIR: I wanted to point that out, because prior to the--the State Supreme Court decision, going through the last redistricting process--don't know the name of it--we had--we had always followed our constitution, which said single--keep counties whole. We had multi-member districts, we had every other way that we could think of to try to keep counties whole. They actually, in my opinion, added the provision to our constitution that said, "Hey, you've got to have single-member districts," which forced us to split our counties all over the state and divide them up.

So now we're going back and--and remembering that our constitution really says, "Keep them whole when you can." And that's kind of where we are here.

Okay. Representative Martin, I believe this is your bill that we've been ignoring you on.

REP. MARTIN: Mr. Chairman, y'all have been doing a better job explaining it than I could. I think Ms. Churchill has covered the law far better than I could, so I'll just talk briefly, if you'll permit me, just on how this made its way through the House, if that's all right.

We established in our rules a standing committee on Pender and New Hanover County redistricting that I chaired, and this bill was referred to that committee. And we heard--we had a public hearing on that and got input. Many folks from down on the coast came up and spoke on it from both Pender and New Hanover Counties. We considered their input and--and drew up these districts and, of course, got some input from the members who represent the--currently represent the districts in question.

The bill passed out of committee and went to the House floor, where it passed, I think, with

only one--one no vote.

I'm pleased to report that the three members who represent Pender and New Hanover County all supported the bill. I know--I don't want to put words into Representative Justice's mouth, but I know she's very happy that--that Pender County is whole. Representative Hughes--again, I don't want to put words--too many words in her mouth--she shares my disapproval of the Supreme Court opinion but our acknowledgement that it is, in fact, the law of the land, and that, under the circumstances, these are about the best districts that we could draw.

So given the--the rules that were handed down to us from the U.S. Supreme Court upholding the North Carolina Supreme Court ruling, we're pleased with what we came up with.

Representative McComas, of course, is happy because we left his--his district alone.

So that's what--that's what brings us here. Again, I'm--I'm happy to talk about the law, but Ms. Churchill has done a far better job than I could.

THE CHAIR: Okay. Discussion? Senator

Soles.

SEN. SOLES: I'd like to--first of all, could you move--I'm trying to see my two House members back there, Representative Spaulding and Representative Justice. I'd like to ask them if they are in agreement that this is the best we could do, and you're satisfied with the map as it is, the bill as it is?

THE CHAIR: And just identify yourself for the record.

REP. HUGHES: Sandra Spaulding Hughes, District 18, Pender--parts of Pender and New Hanover Counties.

And to respond to your question, having worked with the staff, Ms. Churchill, a number of hours, and with Chairperson Martin, we felt that we came up with the best resolution that we could possibly under the circumstances and under the law which was given to us by the Supreme Court.

The suit did state that we must make Pender whole, meaning that Pender must be managed by one representative, and that's what the final resolution was. That was some concern for some time, and it has a long history, perhaps that

Ms. Justice will share with you, from a historical perspective. But we did meet the demands of the lawsuit.

As Representative Martin stated, we did have a committee. We had several people to come speak regarding this. But we kept the precincts whole, also, and we did have a boundary line that we had to work with, also, according to the lawsuit. And again I will say we did the best that we could with the parameters of the lawsuit having been presented to us.

THE CHAIR: Thank you very much.

REP. JUSTICE: Representative Carolyn Justice East, Pender and New Hanover. And I thank you, Senator Soles, for allowing us the opportunity to speak.

This--this started some seven, eight years ago when I was a county commissioner in Pender County. And it was a bipartisan decision by the then county commissioners, made up of Democrats and Republicans, because up until that moment in time Pender County had gone forty years without a legislator who actually lived in Pender County. And so that was the impetus for it. And I don't

think we knew a lot about Supreme Court decisions that day when the--that decision was made to start out on this path. I think the county just knew it felt it needed to have a chance to have somebody that lived in the county to be its legislator. And that was its only motive.

And I am pleased--I couldn't be more pleased with the committee and Representative Martin and Speaker Hackney for moving swiftly. I think we did an excellent job. And Representative Hughes has served the western portion of Pender County well, and Pender County will miss her as their legislator, but they know that they can always turn to her for help if they need her.

THE CHAIR: Thank you very much. And let me ask this: Is there anyone outside the committee that wants to be heard? Okay. And I don't see anybody raising their hand. Senator Soles.

SEN. SOLES: Well, that having been said, I will say that this is probably as good as could be done. Representative Spaulding Hughes is a Democrat. Representative Justice is a Republican. And as the senator representing the area and knowing that they're in agreement, I'd like to make

a motion that the bill be given a favorable report.

THE CHAIR: Okay. You've heard the motion. Do we need to vote in any special way?

MS. CHURCHILL: No, sir.

THE CHAIR: Okay. You've heard the motion. Further discussion? Senator McKissick.

SEN. McKISSICK: I support the motion, but I would be curious to know what the demographic makeup is now of these two districts since this has been an issue. I know it's out here on these charts, but trying to interpret these charts would probably require a statistician's assistance, so if somebody could just simply review that--

THE CHAIR: Is there anyone that can simply do that?

MS. CHURCHILL: I'm sorry. I missed the question.

THE CHAIR: His question was, what is the demographic makeup of these districts now that we're redistricting?

SEN. McKISSICK: And how does that vary from what they were before?

MS. CHURCHILL: I'll turn your attention to the two Excel spreadsheet packages that you

have. You can compare them in any way you see fit. The information you have for Districts 16 and 18 is included in all of the one hundred and twenty districts information. You have their ideal populations. You also have their total population by race and ethnicity. You have the voting-age population by race and ethnicity. You have the voter registration by party and race, and then you have the voter registration by gender and age. And then you have some selected election results from 2000 and 2002. And I'm happy to walk through any of those that you would like to hear--

SEN. McKISSICK: Is it possible to just reduce it to something concise, maybe--

THE CHAIR: Let--let me--let me suggest this.

SEN. McKISSICK: Yeah, 'cause I don't--

THE CHAIR: Due to the fact that we are in the situation we're in and this has consequences, I'd rather not somebody just paraphrase all this information. I believe the information probably speaks better, and it will be part of the record that will show exactly what we're doing there. We have a Democrat and a

Republican both agreeing that it's fair from that area, so that probably tells you more than--more than you--than any information.

SEN. McKISSICK: Well, what I'll do, I'll get with staff later or--or members from the district and--I thought it was a simple question. Thank you.

THE CHAIR: Okay. All right. The motion's before you to give the bill a favorable report. All in favor of that say "aye," opposed, "no."

(Whereupon, a unanimous "aye" vote is heard.)

THE CHAIR: The ayes have it.

REP. MARTIN: Thank you, Mr. Chairman.

THE CHAIR: Thank you, sir. Good work.

(WHEREUPON, THE RECORD WAS CLOSED AT 10:37 A.M.)

STATE OF NORTH CAROLINA -19-

COUNTY OF WAKE

C E R T I F I C A T E

I, Katherine M. Becker, a Notary Public in and for the State of North Carolina, duly commissioned and authorized to administer oaths and to take and certify hearings, do hereby certify that these proceedings were held before me at the time and place aforesaid, that all parties were present as hereinbefore stated, and that the record as set forth in the preceding Pages 2 through 18 represents a true and accurate transcription of the proceedings, to the best of my ability and understanding.

IN WITNESS WHEREOF, I have hereto set my hand, this the 16th day of June, 2009.

Katherine M. Becker

Notary Public
Notary Public No. 20023570191

My Commission Expires 12-29-2012

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 787
Committee Substitute Favorable 4/30/09

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.

HOUSE BILL 787:
Increase Penalty/Remove Serial # From Gun

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 3, 2009
Introduced by:	Reps. Justice, Burr, Gibson, R. Warren	**Prepared by:**	Giles S. Perry
Analysis of:	Second Edition		Committee Counsel

SUMMARY: 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).)

Susan Sitze of the Research Division substantially contributed to this summary.

H787-SMRW-150(e2) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

Attachment X

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 787 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Soles
) _____
Sen.)

1 moves to amend the bill on page 1, line 15 and 20
2 ( ) WHICH CHANGES THE TITLE
3 by _____
4 deleting the comma after
5 the word "permanent"
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 787 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) Soles
Sen.)

moves to amend the bill on page 1, line 15 and 20

( ) WHICH CHANGES THE TITLE

by deleting the comma after the word "permanent"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1190

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

H1190-ASA-22 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
H1190-CSSA-49

Date June 14, ,2009

Senator _____

moves to amend the bill on page 8, lines 10-11
by inserting between those lines the following:

"(12) One public member appointed by the Speaker of the House of Representatives.

(13) One public member appointed by the President Pro Tempore of the Senate."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 1190

Committee Substitute Favorable 4/23/09
Committee Substitute #2 Favorable 5/6/09

Short Title: Preservation of DNA & Biological Evidence. (Public)

Sponsors:

Referred to:

April 8, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND STRENGTHEN THE LAW REGARDING THE PRESERVATION OF DNA AND BIOLOGICAL EVIDENCE THAT IS RELATED TO A CRIMINAL OFFENSE AND A DEFENDANT'S ACCESS TO THAT EVIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-266.1 reads as rewritten:

"**§ 15A-266.1. Policy.**

It is the policy of the State to assist federal, State, and local criminal justice and law enforcement agencies in the identification, detection, or exclusion of individuals who are subjects of the investigation or prosecution of felonies or violent crimes against the person. Identification, detection, and exclusion ~~is~~ are facilitated by the analysis of biological evidence that is often left by the perpetrator or is recovered from the crime scene. The analysis of biological evidence can also be used to identify missing persons and victims of mass disasters."

SECTION 2. G.S. 15A-266.2 reads as rewritten:

"**§ 15A-266.2. Definitions.**

As used in this Article, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) "CODIS" means the FBI's national DNA identification index system that allows the storage and exchange of DNA records submitted by State and local forensic DNA laboratories. The term "CODIS" is derived from Combined DNA Index System.

(1a) "Custodial Agency" means the governmental entity in possession of evidence collected as part of a criminal investigation or prosecution.

(2) "DNA" means deoxyribonucleic acid. DNA is located in the nucleus of cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

(3) "DNA Record" means DNA identification information stored in the State DNA Database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA typing tests. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification tests on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.

(4) "DNA Sample" in this Article means a ~~blood~~ blood, buccal, or any other sample provided by any person convicted of offenses covered by this Article or submitted to the SBI Laboratory for analysis pursuant to a criminal investigation.

(5) "FBI" means the Federal Bureau of Investigation.

(5a) "NDIS" means the National DNA Index System that is the system of DNA profile records which meet federal standards.

(6) "SBI" means the State Bureau of Investigation. The SBI is responsible for the policy management and administration of the State DNA identification record system to support law enforcement, and for liaison with the FBI regarding the State's participation in CODIS.

(7) "State DNA Database" means the SBI's DNA identification record system to support law enforcement. It is administered by the SBI and provides DNA records to the FBI for storage and maintenance in CODIS. The SBI's DNA Database system is the collective capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related to forensic casework, to convicted offenders required to provide a DNA sample under this Article, and to anonymous DNA records used for research or quality control.

(8) "State DNA Databank" means the repository of DNA samples collected under the provisions of this Article."

SECTION 3. G.S. 15A-267 reads as rewritten:

"**§ 15A-267. Access to DNA samples from crime scene.**

(a) A criminal defendant shall have access before trial to the following:

(1) Any DNA analyses performed in connection with the case in which the defendant is charged.

(2) Any biological material, that has not been DNA tested, that was collected from the crime scene, the defendant's residence, or the defendant's property.

(3) A complete inventory of all physical evidence collected in connection with the investigation.

(b) Access as provided for in subsection (a) of this section shall be governed by G.S. 15A-902 and G.S. 15A-952.

(c) Upon a defendant's motion made before trial in accordance with G.S. 15A-952, the court ~~may~~ shall order the SBI or any approved vendor that meets SBI contracting standards to perform DNA testing ~~and DNA Database comparisons of any biological material collected in connection with the case in which the defendant is charged~~ and, if the data meets NDIS criteria, order the SBI to search and/or upload to CODIS any profiles obtained from the testing upon a showing of all of the following:

(1) That the biological material is relevant to the investigation.

(2) That the biological material was not previously DNA tested or that more accurate testing procedures are now available that were not available at the time of previous testing and there is a reasonable possibility that the result would have been different.

(3) That the testing is material to the defendant's defense.

(d) The defendant shall be responsible for bearing the cost of any further testing and comparison of the biological materials, including any costs associated with the testing and comparison by the SBI in accordance with this section, unless the court has determined the defendant is indigent, in which event the State shall bear the costs."

SECTION 4. G.S. 15A-268 reads as rewritten:

"**§ 15A-268. Preservation of biological evidence.**

(a) As used in this section, the term "biological evidence" includes the contents of a sexual assault examination kit or any item that contains blood, semen, hair, saliva, skin tissue, fingerprints, or other identifiable human biological ~~material,~~ material that may reasonably be used to incriminate or exculpate any person in the criminal investigation, whether that material is catalogued separately on a slide or swab, in a test tube, or some other similar method, or is present on clothing, ligatures, bedding, other household materials, drinking cups, cigarettes, or any other item of evidence.

(a1) Notwithstanding any other provision of law and subject to subsection (b) of this section, a ~~governmental entity in custody of evidence~~ custodial agency shall preserve any physical evidence that is reasonably likely to contain any biological evidence collected in the course of a criminal investigation or prosecution. Evidence shall be preserved in a manner reasonably calculated to prevent contamination or degradation of any biological evidence that might be present, subject to a continuous chain of custody, and securely retained with sufficient official documentation to locate the evidence.

(a2) The SBI shall promulgate and publish minimum guidelines that meet the requirements for retention and preservation of biological evidence under subsection (a1) of this section. Guidelines shall be published no later than January 1, 2010, and shall be reviewed and updated biennially thereafter. Law enforcement agencies and the Conference of Clerks of Superior Court shall ensure the guidelines are distributed to all employees with responsibility for maintaining custody of evidence.

(a3) When physical evidence is offered or admitted into evidence in a criminal proceeding of the General Court of Justice, the presiding judge shall inquire of the State and defendant as to the identity of the collecting agency of the evidence and whether the evidence in question is reasonably likely to contain biological evidence and if that biological evidence is relevant to establishing the identity of the perpetrator in the case. If either party asserts that the evidence in question may have biological evidentiary value, and the court so finds, the court shall instruct that the evidence be so designated in the court's records and that the evidence be preserved pursuant to the requirements of this section.

(a4) If evidence has been designated by the court as biological evidence pursuant to subsection (a3) of this section, the clerk of superior court that takes custody of evidence pursuant to the rules of practice and procedure for the superior and district courts as adopted by the Supreme Court pursuant to G.S. 7A-34 shall preserve such evidence consistent with subsection (a1) of this section. Upon conclusion of the clerk's role as custodian, as provided in the applicable rules of practice, the clerk shall return such evidence to the collecting agency, as determined in subsection (a3) of this section, in a manner that ensures the chain of custody is maintained and documented.

(a5) The duty to preserve may not be waived knowingly and voluntarily by a defendant, without a court proceeding.

~~(a2)~~(a6) The evidence described by subsection (a1) of this section shall be preserved for the following period:

(1) For conviction resulting in a sentence of death, until execution.

(1a) For conviction resulting in a sentence of life without parole, until the death of the convicted person.

(1b) For conviction of any homicide, sex offense, assault, kidnapping, burglary, robbery, arson or burning, for which a Class B1-E felony punishment is imposed, the evidence shall be preserved during the period of incarceration and mandatory supervised release, including sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for the earlier of three years from the date of conviction or until released.

~~(2) For conviction of a violent felony, as defined in G.S. 14-7.7(b), the evidence shall be preserved during the period of incarceration except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for three years from the date of conviction.~~

~~(3) For conviction of an offense requiring sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, during the period of incarceration and any period of mandatory supervised release or probation.~~

~~(4) For conviction of any felony not governed by subdivisions (1), (2), or (3) of this subsection for which the defendant's genetic profile may be taken by a law enforcement agency and included in the State DNA database, the evidence shall be preserved for a period of seven years from the date of conviction except in cases where the person convicted entered and was convicted on a plea of guilty, in which case the evidence shall be preserved for three years from the date of conviction.~~

(5) Biological evidence collected as part of a criminal investigation of any homicide or rape, in which no charges are filed, shall be preserved for the period of time that the crime remains unsolved.

(6) A custodial agency in custody of biological evidence unrelated to a criminal investigation or prosecution referenced by subdivision (1), (1a), (1b), or (5) of this subsection may dispose of the evidence in accordance with the rules of the agency.

(a7) Upon written request by the defendant, the custodial agency shall prepare an inventory of biological evidence relevant to the defendant's case that has been preserved pursuant to this section.

(b) The ~~governmental entity~~ custodial agency required to preserve evidence pursuant to subsection (a1) of this section may ~~petition the court for an order allowing for disposition~~ dispose of the evidence prior to the expiration of the period of time described in subsection ~~(a2)~~(a6) of this section if all of the following conditions are met:

(1) The ~~governmental entity~~ custodial agency sent notice of its intent to dispose of the evidence to the district attorney in the county in which the conviction was obtained.

(2) The district attorney gave to each of the following persons written notification of the intent of the ~~governmental entity~~ custodial agency to dispose of the evidence: any defendant convicted of a felony who is currently incarcerated in connection with the case, the defendant's ~~current~~ counsel of ~~record,~~record for that case, and the Office of Indigent Defense ~~Services, and the Attorney General.~~Services. The notice shall be consistent with the provisions of this section, and the district attorney shall send a copy of the notice to the ~~governmental entity.~~custodial agency. Delivery of written notification from the district attorney to the defendant was effectuated by the district attorney transmitting the written notification to the superintendent of the correctional facility where the defendant was assigned at the time and the superintendent's personal delivery of the written notification to the defendant. Certification of delivery by the superintendent to the defendant in accordance with this subdivision was in accordance with subsection (c) of this section.

(3) The written notification from the district attorney specified the following:

a. That the ~~governmental entity~~custodial agency would destroy the evidence collected in connection with the case unless the

~~governmental entity~~custodial agency received a written request that the evidence not be destroyed.

b. The address of the ~~governmental entity~~custodial agency where the written request was to be sent.

c. That the written request from the defendant, or his or her representative, must be received by the ~~governmental entity~~ custodial agency within 90 days of the date of receipt by the defendant of the district attorney's written notification.

d. That the written request must ask that the ~~material~~ evidence not be destroyed or disposed of for one of the following reasons:

1. The case is currently on appeal.
2. The case is currently in postconviction proceedings.
3. The defendant will file ~~within 180 days of the date of receipt by the defendant of the district attorney's written notification~~ a motion for DNA testing pursuant to ~~G.S. 15A-269, that is followed~~ G.S. 15A-269 within 180 days of ~~sending the request that the evidence not be destroyed or disposed of, by a motion for DNA testing pursuant to G.S. 15A-269,~~ the postmark of the defendant's response to the district attorney's written notification of the governmental entity's intent to dispose of the evidence, unless a request for extension is requested by the defendant and agreed to by the ~~governmental entity in possession of the evidence.~~custodial agency.

(4) The ~~governmental entity~~ custodial agency did not receive a written request in compliance with the conditions set forth in sub-subdivision (3)d. of this subsection within 90 days of the date of receipt by the defendant of the district attorney's written notification.

(c) Upon receiving a written notification from a district attorney in accordance with subdivision (b)(3) of this section, the superintendent shall personally deliver the written notification to the defendant. Upon effectuating personal delivery on the defendant, the superintendent shall sign a sworn written certification that the written notification had been delivered to the defendant in compliance with this subsection indicating the date the delivery was made. The superintendent's certification shall be sent by the superintendent to the ~~governmental entity~~ custodial agency that intends to dispose of the sample of evidence. The ~~governmental entity~~ custodial agency may rely on the superintendent's certification as evidence of the date of receipt by the defendant of the district attorney's written notification.

(d) After a ~~hearing,~~ hearing held in response to a defendant's written request that the evidence not be destroyed in response to notice pursuant to subsection (b) of this section, the court may enter an order authorizing the ~~governmental entity~~ custodial agency to dispose of the evidence if the court determines by the preponderance of the evidence that the evidence:

(1) Has no significant value for biological analysis and should be returned to its rightful owner, destroyed, used for training purposes, or otherwise disposed of as provided by law; or

~~(2) Has no significant value for biological analysis and is of a size, bulk, or physical characteristic not usually retained by the governmental entity and cannot practically be retained by the governmental entity; or~~

(3) May have value for biological analysis but is of a size, bulk, or physical ~~characteristic not usually retained by the governmental entity and cannot practically be retained by the governmental entity.~~character as to render retention impracticable or should be returned to its rightful owner.

(e) The court order allowing the disposition of the evidence pursuant to ~~this section may~~ subdivision (d)(3) of this section shall require the ~~governmental entity to~~ custodial agency to return such evidence to the collecting agency. The collecting agency shall take reasonable measures to remove or preserve portions of evidence ~~suitable for future biological testing or~~ likely to contain biological evidence related to the offense through cuttings, swabs, or other means consistent with SBI minimum guidelines in a quantity sufficient to permit DNA testing before returning or disposing of the evidence. The court may provide the defendant an opportunity to take reasonable measures to preserve the evidence.

(f) An order regarding the disposition of evidence pursuant to this section shall be a final and appealable order. The defendant shall have 30 days from the entry of the order to file notice of appeal. The governmental entity shall not dispose of the evidence while the appeal is pending.

(g) If an entity is asked to produce evidence that is required to be preserved under the provisions of this section and cannot produce the evidence, the chief evidence custodian of the custodial agency shall provide an affidavit in which he or she describes, under penalty of perjury, the efforts taken to locate the evidence and affirms that the evidence could not be located. If the evidence that is required to be preserved pursuant to this section has been destroyed, the court may conduct a hearing to determine whether obstruction of justice and contempt proceedings are in order. If the court finds the destruction violated the defendant's due process rights, the court shall order an appropriate remedy, which may include dismissal of charges.

(h) All records documenting the possession, control, storage, and destruction of evidence related to a criminal investigation or prosecution of an offense referenced in subdivision (1), (1a), (1b), or (5) of subsection (a6) of this section shall be retained.

(i) Whoever knowingly and intentionally destroys, alters, conceals, or tampers with evidence that is required to be preserved under this section, with the intent to impair the integrity of that evidence, prevent that evidence from being subjected to DNA testing, or prevent production or use of that evidence in an official proceeding, shall be punished as follows:

(1) If the evidence is for a noncapital crime, then a violation of this subsection is a Class I felony.

(2) If the evidence is for a crime of first degree murder, then a violation of this subsection is a Class H felony."

SECTION 5. G.S. 15A-269 reads as rewritten:

"**§ 15A-269. Request for postconviction DNA testing.**

(a) A defendant may make a motion before the trial court that entered the judgment of conviction against the defendant for performance of DNA testing ~~of any~~ and, if testing complies with FBI requirements and the data meets NDIS criteria, profiles obtained from the testing shall be searched and/or uploaded to CODIS if the biological evidence ~~that~~ meets all of the following conditions:

(1) Is material to the defendant's defense.

(2) Is related to the investigation or prosecution that resulted in the judgment.

(3) Meets either of the following conditions:

a. It was not DNA tested previously.

b. It was tested previously, but the requested DNA test would provide results that are significantly more accurate and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

(b) The court shall grant the motion for DNA testing and, if testing complies with FBI requirements, the run of any profiles obtained from the testing, ~~of the evidence~~ upon its determination that:

(1) The conditions set forth in subdivisions (1), (2), and (3) of subsection (a) of this section have been met;

(2) If the DNA testing being requested had been conducted on the evidence, there exists a reasonable probability that the verdict would have been more favorable to the defendant; and

(3) The defendant has signed a sworn affidavit of innocence.

(b1) If the court orders DNA testing, such testing shall be conducted by an SBI-approved testing facility, mutually agreed upon by the petitioner and the State and approved by the court. If the parties cannot agree, the court shall designate the testing facility and provide the parties with reasonable opportunity to be heard on the issue.

(c) The court shall appoint counsel for the person who brings a motion under this section if that person is indigent. If the petitioner has filed pro se, the court shall appoint counsel for the petitioner upon a showing that the DNA testing may be material to the petitioner's claim of wrongful conviction.

(d) The defendant shall be responsible for bearing the cost of any DNA testing ordered under this section unless the court determines the defendant is indigent, in which event the State shall bear the costs.

(e) DNA testing ordered by the court pursuant to this section shall be done as soon as practicable. However, if the court finds that a miscarriage of justice will otherwise occur and that DNA testing is necessary in the interests of justice, the court shall order a delay of the proceedings or execution of the sentence pending the DNA testing.

(f) Upon receipt of a motion for postconviction DNA testing, the custodial agency shall inventory the evidence pertaining to that case and provide the inventory list, as well as any documents, notes, logs, or reports relating to the items of physical evidence, to the prosecution, the petitioner, and the court.

(g) Upon receipt of a motion for postconviction DNA testing, the State shall, upon request, reactivate any victim services for the victim of the crime being investigated during the reinvestigation of the case and pendency of the proceedings.

(h) Nothing in this Article shall prohibit a convicted person and the State from consenting to and conducting postconviction DNA testing by agreement of the parties, without filing a motion for postconviction testing under this Article."

SECTION 6. G.S. 15A-270.1 reads as rewritten:

"**§ 15A-270.1. Right to appeal denial of defendant's motion for DNA testing.**

The defendant may appeal an order denying the defendant's motion for DNA testing under this Article, including by an interlocutory appeal. The court shall appoint counsel upon a finding of indigency."

SECTION 7.(a) The Joint Select Study Committee on the Preservation of Biological Evidence is established. The membership shall be as follows:

(1) Three members of the Senate appointed by the President Pro Tempore of the Senate.

(2) Three members of the House of Representatives appointed by the Speaker of the House of Representatives.

(3) The Attorney General or the Attorney General's designee.

(4) The Director of the SBI or the Director's designee.

(5) The Director of the Administrative Office of the Courts or the Director's designee.

(6) The President of the North Carolina Association of Clerks of Superior Court or the President's designee.

(7) The President of the North Carolina Association of Chiefs of Police or the President's designee.

(8) The President of the North Carolina Sheriffs' Association or the President's designee.
(9) The President of North Carolina Advocates for Justice or the President's designee.
(10) One North Carolina district attorney appointed by the Speaker of the House of Representatives.
(11) One North Carolina district attorney appointed by the President Pro Tempore of the Senate.

The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint one legislative member of the Committee to serve as cochair. The Committee shall meet upon the call of the cochairs. A quorum of the Committee shall be a majority of its members.

SECTION 7.(b) The Committee shall review matters related to the preservation of DNA and biological evidence, including:

(1) The costs associated with the promulgation of minimum guidelines for the retention and preservation of biological evidence.
(2) Emerging technologies with regard to the retention and preservation of biological evidence.
(3) Procedures for the interagency transfer of biological evidence.
(4) Any other topic the Committee believes is related to its purpose.

SECTION 7.(c) 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. The expenses of the Committee shall be considered expenses incurred for the joint operation of the General Assembly. All expenses of the Committee shall be paid from the Legislative Services Commission's Reserve for Studies. The Legislative Services Officer shall assign professional and clerical staff to assist the Committee in its work.

SECTION 7.(d) The Committee shall submit a final report on the results of its study, including any proposed legislation, to the General Assembly on or before April 1, 2010. The Committee shall file a copy of its report with the President Pro Tempore's office, the Speaker's office, and the Legislative Library. The Committee shall terminate on April 1, 2010, or upon the filing of its final report, whichever occurs first.

SECTION 8. Section 7 of this act is effective when it becomes law. The remainder of this act becomes effective December 1, 2009.

HOUSE BILL 1190: Preservation of DNA & Biological Evidence

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	May 29, 2009
Introduced by:	Reps. Glazier, Stam, Ross	**Prepared by:**	Susan Sitze* Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 1190 amends the law regarding the preservation of DNA and biological evidence related to a criminal offense, and the defendant's access to that evidence. The bill also creates a Joint Select Committee on the Preservation of Biological Evidence.***

CURRENT LAW: The DNA Database and Databank Act (Article 13 of Chapter 15A of the General Statutes) establishes the policy and procedures for the collection, analysis, preservation, and use of biological evidence in connection with criminal offenses.

BILL ANALYSIS: House Bill 1190 amends the law regarding the preservation of DNA and biological evidence related to a criminal offense, and the defendant's access to that evidence.

Section 2 defines "custodial agency" as any governmental entity in possession of evidence collected as part of a criminal investigation or prosecution, and amends the definition of "DNA sample" to include not only blood samples but also samples from the cheeks or mouth and any other sample provided by a person convicted of a criminal offense covered by the DNA Database and Databank Act.

Section 3 adds a provision requiring that a criminal defendant have access before trial to a complete inventory of all physical evidence collected in connection with the investigation. It would allow certain accredited labs to perform required DNA testing of biological material collected in connection with the criminal case and require the SBI to search and upload to CODIS any profiles obtained from the testing, if the biological material is relevant to the investigation or testing is material to the defendant's defense.

Section 4 of the bill provides for the retention and preservation of biological evidence.

- It amends the definition of "biological evidence" to include fingerprints and other human biological material which may reasonably be used to incriminate or exculpate any person in the course of a criminal investigation.
- It requires the SBI to establish minimum guidelines for the retention and preservation of biological evidence in a manner that would prevent contamination or degradation of the evidence and provide a continuous chain of custody with sufficient official documentation to locate the evidence. The guidelines are to be published by January 1, 2010, and distributed by law enforcement agencies and clerks of court to all employees with responsibility for maintaining custody of evidence. The guidelines would be reviewed and updated biennially.
- It requires the judge in a criminal proceeding to determine whether physical evidence offered or admitted into evidence is reasonably likely to contain biological evidence relevant to establishing the identity of the perpetrator in the case; and if either party asserts that to be the case, the court must designate it as biological evidence and instruct that the evidence be properly preserved by the clerk of superior court until such time as it is returned to the collecting agency. The duty to preserve cannot be waived knowingly and voluntarily by a defendant without a court proceeding.
- It rewrites the law pertaining to the applicable time periods for the preservation of biological evidence collected in the course of a criminal investigation or prosecution, and requires the agency in possession of the evidence to prepare an inventory of biological evidence relevant to

the defendant's case if requested by the defendant. It establishes the following time periods for the preservation of biological evidence:

- Sentence of death – until execution
- Sentence of life without parole – until the death of the convicted person
- Any homicide, sex offense, assault, kidnapping, burglary, robbery, arson or burning, for which a Classes B1-E felony punishment is imposed – for the duration of the period of incarceration and mandatory supervised release, including sex offender registration. If there was a guilty plea, the evidence would be preserved for the earlier of three years from the date of conviction or until release.
- Any criminal investigation of a homicide or rape in which no charges are filed – the period of time that the crime remains unsolved.
- Any biological evidence unrelated to a criminal investigation or prosecution for which a time period for preservation is unspecified could be disposed of by a governmental entity in accordance with rules of its governing agency.

- It provides that if a custodial agency is asked for and cannot produce evidence that is required to be preserved, the chief custodian must provide an affidavit describing efforts taken to locate the evidence and affirming that the evidence could not be located. If the evidence has been destroyed, and the court finds that the destruction violated the defendant's due process rights, the court must order an appropriate remedy, which may include dismissal of charges.

Disposition of Evidence – Section 4 of the bill also eliminates the requirement for the agency having custody of evidence to petition the court for an order allowing for disposition of the evidence before the expiration of the prescribed time period for preservation of the evidence. The bill retains existing provisions requiring notice of the intent to dispose of evidence, but a hearing would be held only in response to the defendant's request that the evidence not be destroyed. If a hearing is held upon written request of a defendant, the court could authorize the custodial agency to dispose of the evidence if it determines that the evidence has no significant value for biological evidence or is of a size and bulk as to render retention impracticable. The court order would then allow disposition of the evidence, but require the custodial agency to remove or preserve those portions of the evidence likely to contain biological evidence using cuttings, swabs, or other means that would permit DNA testing. The defendant would have 30 days in which to appeal the order.

Retention of Records – Section 4 of the bill requires that all records documenting the possession, control, storage, and destruction of evidence related to the specified criminal offenses be retained.

Criminal Penalty – The bill creates a criminal penalty for anyone who knowingly and intentionally destroys, conceals, or tampers with evidence that is required to be preserved, with the intent to impair the integrity of the evidence, prevent DNA testing, or prevent use of the evidence in an official proceeding. Violation would be a Class I felony for a noncapital crime; for evidence for a crime of 1st degree murder, violation would be a Class H felony.

Post Conviction DNA Testing -- Section 5 of the bill amends the law concerning a defendant's request for postconviction DNA testing. The bill provides for the uploading to CODIS of profiles obtained from DNA testing that complies with FBI requirements. (*CODIS is the acronym for the Combined DNA Index System, the FBI computer system that stores DNA profiles created by federal, state, and local crime laboratories in the United States, with the ability to search the database to assist in the identification of suspects in crimes.*) The bill would require that any court-ordered DNA testing be conducted by SBI

approved facilities mutually agreed upon by the petitioner and the State and approved by the court. If a defendant has filed without an attorney, the court would be required to appoint counsel for the petitioner upon a showing that DNA testing may be material to the petitioner's claim of wrongful conviction. Upon receipt of a motion for postconviction DNA testing, the custodial agency would be required to inventory the evidence pertaining to the case and provide the inventory list to the prosecution, the petitioner, and the court; the State would be required, upon request, to reactivate victim services for the victim of the crime being investigated. A convicted person and the State may consent to and conduct postconviction DNA testing by agreement and without filing a motion.

Section 6 of the bill requires the court to appoint counsel for an indigent defendant appealing an order denying the defendant's motion for DNA testing.

Section 7 of the bill creates a Joint Select Study Committee on the Preservation of Biological Evidence to consider issues including agency costs, the effect of emerging technologies, and procedures for the transfer of evidence. The report would report to the General Assembly not later than April 1, 2010.

EFFECTIVE DATE: The section creating the study committee would be effective when the bill becomes law. The remainder of the bill would become effective December 1, 2009.

**Brenda Carter and Drupti Chauhan, Staff Attorneys, significantly contributed to this summary.*

SENATE JUDICIARY I COMMITTEE
(Civil)

June 11, 2009
10:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Thursday, June 11, 2009, in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin L. Nesbitt, Vice-Chairmen Dan Clodfelter, Pete Brunstetter, R.C. Soles, and Josh Stein; members, Senators Charlie Albertson, Andrew Brock, Harry Brown, Debbie Clary, Malcolm Graham, David Hoyle, Clark Jenkins, Ellie Kinnaird, Tony Rand, and David Rouzer; Staff Counsel Erika Churchill, Giles Perry, Susan Sitze, and Bill Patterson; Committee Assistants Jan Lee and Jessica Bennett.

Senator Nesbitt recognized Senator Clodfelter to explain S.B. 663 – Increase Access to Justice. Senator Clodfelter explained the bill and said this is a budget bill and needs to go to Appropriations and after questions and discussion he asked that S.B. 663 be given a favorable report. The committee voted unanimously to give S.B. 663 a favorable report and referred it to the Committee on Appropriations.

Senator Nesbitt recognized Representative Tillis to explain H.B. 323 – Prevent the Theft of Scrap Metal. Representative Tillis explained H.B. 323 assisted by Staff Counsel Giles Perry. Major Andy Leonard and Will Culpepper with CMPA Scrap Metal spoke for the bill. After questions and discussion Senator Brunstetter made the motion to give H.B. 323 a favorable report and it passed unanimously.

Senator Nesbitt recognized Representative Hurley to explain Committee Substitute for H.B. 473 – Magistrate Can Carry Gun in Courthouse. Representative Hurley explained the bill assisted by Staff Counsel Erika Churchill. After questions and discussion Senator Clodfelter sent forth an amendment and moved for the adoption. It was adopted unanimously by the committee. Senator Kinnaird sent forth an amendment and it was adopted unanimously by the committee. Senator Clary made the motion to roll the two amendments into a Senate Committee Substitute for H.B. 473 and give it a favorable report and unfavorable to the original bill. The motion passed unanimously.

The meeting adjourned at 11:00 a.m.

Copies of S.B. 663, Bill Analysis for S.B. 663, C.S. for H.B. 323, Bill Analysis for .B. 323, C.S. for H.B. 473, Bill Analysis for H.B. 473, 2 Amendments for H.B. 473 are attached to these Minutes as Attachments I, II, III, IV, V, VI, VII, VIII respectively.

Respectfully Submitted,

Senator Martin L. Nesbitt
Chairman

Janette W. Lee
Committee Assistant

SENATE JUDICIARY I COMMITTEE
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Respectfully Submitted,

Senator Martin L. Nesbitt
Chairman

Janette W. Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SENATE BILL 663

Short Title:	Increase Access to Justice.	(Public)
Sponsors:	Senator Clodfelter.	
Referred to:	Judiciary I.	

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE ACCESS TO JUSTICE IN THE CIVIL COURTS, AS RECOMMENDED BY THE CHIEF JUSTICE'S NORTH CAROLINA EQUAL ACCESS TO JUSTICE COMMISSION.

Whereas, open and fair civil courts and tribunals of justice are one of the preeminent hallmarks of our constitutional democracy and an historic legacy of this State since its colonial days; and

Whereas, many of our State's citizens cannot afford legal representation even for cases in which vital decisions about their lives and families are being decided; and

Whereas, more than one-third – nearly 3.2 million – of North Carolinians are now eligible for federally-subsidized legal assistance, which is not adequate to meet the great need; and

Whereas, our courts and tribunals cannot be considered open and fair unless access to competent legal assistance is more readily available; and

Whereas, civil legal representation helps tens of thousands of North Carolina residents annually to meet such basic needs as adequate housing, health care, increased income, and safety from domestic violence; and

Whereas, the General Assembly resolves to expand openness and fairness in our State's courts and tribunals by making more readily available competent legal assistance to those in financial need by enacting the following legislation; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1.1. G.S. 7A-304(a)(4) reads as rewritten:

"(4) For support of the General Court of Justice, the sum of ninety-five dollars and fifty cents ($95.50) in the district court, including cases before a magistrate, and the sum of one hundred two dollars and fifty cents ($102.50) in the superior court, to be remitted to the State Treasurer. For a person convicted of a felony in superior court who has made a first appearance in district court, both the district court and superior court fees shall be assessed. The State Treasurer shall remit the sum of ~~two dollars and five cents ($2.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and~~ ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in ~~G.S. 7A-474.19.~~ G.S. 7A-474.19, and a portion of each fee collected under this subdivision, in an amount equal to that specified in the table below, to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4:

Fiscal Year	Amount

2009-2010	$4.05
2010-2011	6.05
2011-2012	8.05
2012-2013 and after	10.00."

SECTION 1.2. G.S. 7A-305(a)(2) reads as rewritten:

"(2) For support of the General Court of Justice, the sum of ninety-three dollars ($93.00) in the superior court, except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3, an additional two hundred dollars ($200.00) shall be paid upon its assignment, and the sum of seventy-three dollars ($73.00) in the district court except that if the case is assigned to a magistrate the sum shall be sixty-three dollars ($63.00). 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 ($2.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4,~~ ~~and~~ ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in ~~G.S. 7A-474.19.~~ G.S. 7A-474.19, and a portion of each fee collected under this subdivision, in an amount equal to that specified in the table below, to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4:

Fiscal Year	Amount
2009-2010	$4.05
2010-2011	6.05
2011-2012	8.05
2012-2013 and after	10.00."

SECTION 1.3. G.S. 7A-306(a)(2) reads as rewritten:

"(2) For support of the General Court of Justice the sum of forty dollars ($40.00). In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars ($100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars ($100.00) of value, or major fraction thereof, not to exceed a maximum additional sum of two hundred dollars ($200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. 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)~~ a portion of each forty-dollar ($40.00) General Court of Justice fee collected under this ~~subdivision~~ subdivision, in an amount equal to that specified in the table below, to the North Carolina State Bar for the provision of services described in ~~G.S. 7A-474.4.~~ G.S. 7A-474.4:

Fiscal Year	Amount
2009-2010	$4.05
2010-2011	6.05
2011-2012	8.05
2012-2013 and after	10.00."

SECTION 1.4. G.S. 7A-307(a)(2) reads as rewritten:

"(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)~~ a portion of each fifty-dollar ($50.00) General Court of Justice fee collected under this ~~subdivision~~ subdivision, in an amount equal to that specified in the table below, to the North Carolina State Bar for the provision of services described in ~~G.S. 7A-474.4.~~ G.S. 7A-474.4:

Fiscal Year	Amount
2009-2010	$4.05
2010-2011	6.05
2011-2012	8.05
2012-2013 and after	10.00."

SECTION 1.5. G.S. 7A-308(a)(1) reads as rewritten:

"(1) Foreclosure under power of sale in deed of trust or mortgage.....$75.00 The State Treasurer shall remit the sum of fifty dollars ($50.00) of each fee collected under this subdivision to the North Carolina State Bar for the provision of foreclosure services described in G.S. 7A-474.4. If the property is sold under the power of sale, an additional amount will be charged, determined by the following formula: forty-five cents (.45) per one hundred dollars ($100.00), or major fraction thereof, of the final sale price. If the amount determined by the formula is less than ten dollars ($10.00), a minimum ten dollar ($10.00) fee will be collected. If the amount determined by the formula is more than five hundred dollars ($500.00), a maximum five hundred-dollar ($500.00) fee will be collected."

SECTION 2.1. The General Assembly finds that homeownership is the primary means by which families and individuals of low and moderate incomes build wealth. The General Assembly further finds that homeownership and a healthy housing market are essential to the health and economic vitality of North Carolina.

SECTION 2.2. There is appropriated from the General Fund to the North Carolina State Bar the sum of one million eight hundred thousand dollars ($1,800,000) for the 2009-2010 fiscal year and the sum of one million eight hundred thousand dollars ($1,800,000) for the 2010-2011 fiscal year in recurring funds to be allocated to the established legal services programs under G.S. 7A-474.2 to provide access to legal assistance to low-income consumers in cases involving predatory mortgage lending, mortgage broker and loan services abuses, foreclosure defense, and other legal issues that relate to helping low-income consumers avoid foreclosure and home loss.

SECTION 3.1. Section 22.6 of S.L. 2008-107 reads as rewritten:

"**SECTION 22.6.(a)** The Office of State Budget and Management, in consultation with the Department of Administration, shall study the level of State assistance provided to county veterans service programs by the Aid to Counties program within the Department of

Administration pursuant to G.S. 165-6(9). The Office will collect data from county programs, including a five-year analysis of county spending, the number and type of veteran claims filed, and the number of FTE staff assigned to the county programs, to assess the level of services provided. The study should examine the effect of changing the amount of assistance that a county is eligible to receive pursuant to G.S. 165-6(9). The study should include an analysis of the number of claims filed with each veterans service program; total county spending for the programs; the number of cases requiring appeal; whether the assistance of an attorney was provided on appeals; and the county veteran population. The study should also include a section on recommended statutory changes, budgetary increases, distribution reallocations, and administrative changes to the Division of Veterans Affairs.

SECTION 22.6.(b) The Office of State Budget and Management shall submit a final report of its findings and recommendations to the House Appropriations Subcommittee on General Government, the Senate Appropriations Subcommittee on General Government and Information Technology, and the Fiscal Research Division no later than ~~March 1, 2009.~~ March 1, 2010."

SECTION 3.2. The General Assembly finds that:

(1) Approximately 150,000 veterans reside in North Carolina;

(2) North Carolinians have over 19,000 claims for veterans benefits pending with the Veterans Administration; and

(3) The resolution of these claims affects veterans as well as thousands of family members in the State.

Therefore, it is fitting and appropriate that the State of North Carolina ensure that veterans and their families are provided with adequate legal assistance to pursue their just claims for benefits against the Veterans Administration and other federal agencies that provide veterans with benefits, including claims for disability. Veterans from across this State and from all branches of the armed services deserve adequate review and representation for their claims.

SECTION 3.3. There is appropriated from the General Fund to the Division of Veterans Affairs, Department of Administration, the sum of three million dollars ($3,000,000) for the 2009-2010 fiscal year and the sum of three million dollars ($3,000,000) for the 2010-2011 fiscal year in recurring funds to contract with one or more of the established legal services programs under G.S. 7A-474.2 and Disability Rights of North Carolina to provide adequate legal representation to veterans and their families in all 100 counties of the State in cases involving appeal of denials beyond the administrative level to the appropriate federal agency, administrative law process, or appellate court as well as in cases involving other legal issues as the Division of Veterans Affairs concludes is most helpful to veterans and their immediate families residing in North Carolina.

SECTION 4.1. G.S. 7A-474.2(1) reads as rewritten:

"(1) "Eligible client" means a resident of North Carolina financially eligible for representation under the Legal Services Corporation Act, regulations, and interpretations adopted thereunder (45 C.F.R. § 1611, and subsequent revisions), or a person entitled to State benefits or services pursuant to ~~G.S. 14-43.11(d).~~ G.S. 14-43.11(d), or to a veteran of the United States armed forces, reserves, or national guard, who is a resident of the State."

SECTION 4.2. G.S. 7A-474.3(b) reads as rewritten:

"(b) Eligible Cases. Legal assistance shall be provided to eligible clients under this Article only in the following types of cases:

(1) Family violence or spouse abuse;

~~(2) Assistance for the disabled in obtaining federal Social Security benefits;~~

(2a) Assistance for eligible clients in obtaining benefits or assistance under any federal law or program providing benefits or assistance for human trafficking victims.

(2b) Representation of eligible veterans and their families in cases involving appeal of denials of veterans benefits beyond the administrative level to the appropriate federal agency, administrative law process, or appellate court as well as in cases involving other legal issues as the Division of Veterans Affairs concludes is most helpful to veterans and their immediate families residing in North Carolina.

(3) Representation of eligible farmers faced with the potential of farm foreclosure;

(4) Representation of eligible clients who are disabled or over the age of 60 regarding the following matters:

a. Wills and estates;

b. Safe and sanitary housing;

c. Pensions and retirement rights;

d. Obtaining Social ~~Security~~ Security, Supplemental Security Income, Medicaid, and Medicare ~~rights;~~ rights and benefits; and

~~e. Access to health care;~~

~~f. Food and nutrition; and~~

g. Transportation.

(5) Representation of eligible clients designed to enable them to obtain the necessary skills and means to obtain meaningful employment at a decent wage and reduce the public welfare rolls; and

(6) Representation of eligible clients under the age of 21 or eligible families with legal problems affecting persons under the age of 21 regarding the following matters:

a. Financial support and custody of children;

b. Child care;

c. Child abuse or neglect;

d. Safe and sanitary housing;

e. Food and nutrition; and

f. Access to health care.

(7) Legal assistance to consumers in cases involving predatory mortgage lending, mortgage broker and loan services abuses, foreclosure defense, and other legal issues that relate to helping consumers avoid foreclosure and home loss.

(8) Representation of eligible clients in cases involving access to health care, food, and nutrition.

(9) Assistance and advocacy support in special education matters to at-risk students from low-income families."

SECTION 5.1. The General Assembly finds that:

(1) The completion of a high school education is essential to the maintenance of a competitive workforce;

(2) Dropout prevention is a necessary component to ensure adequate high school graduation rates;

(3) Children with learning disabilities constitute twenty-one and eight-tenths percent (21.8%) of students subject to short-term suspensions and thirty-three percent (33%) of students charged with criminal offenses involving other students and school staff, factors that contribute to increased dropout rates among these students.

(4) Providing legal assistance in special education matters to these at-risk students would decrease the dropout rate for this vulnerable population. The General Assembly further finds that education is a protective factor in

helping to improve the employment rate of students with disabilities and to reduce juvenile delinquency, unemployment, and incarceration.

Therefore, it is fitting that the State of North Carolina will improve the educational opportunities and outcomes of children with disabilities with training, collaboration, and legal assistance.

SECTION 5.2. There is appropriated from the General Fund to the North Carolina State Bar the sum of one million dollars ($1,000,000) for the 2009-2010 fiscal year and the sum of one million dollars ($1,000,000) for the 2010-2011 fiscal year in recurring funds to reduce school suspension, dropout rates, and juvenile court referrals by providing advocacy support in special education matters to at-risk students from low-income families. These funds are to be allocated to the established legal programs under G.S. 7A-474.2, Disability Rights of North Carolina and other organizations providing legal services to low-income families and individuals as may be approved by the North Carolina State Bar.

SECTION 6. Section 1.1 of this act becomes effective July 1, 2009, and applies to all costs assessed or collected on or after that date, except that in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2), in which the citation or other criminal process was issued before that date, the cost shall be the lesser of those specified in G.S. 7A-304(a), as amended by Section 1.1 of this act, or those specified in the notice portion of the defendant's or respondent's copy of the citation or other criminal process, if any costs are specified in that notice. Sections 1.2 through 1.5 of this act become effective July 1, 2009, and apply to fees assessed or collected on or after that date. The remainder of this act becomes effective July 1, 2009.

SENATE BILL 663:
Increase Access to Justice

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 10, 2009
Introduced by:	Sen. Clodfelter	**Prepared by:**	Giles S. Perry
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 663 changes the portion of court costs that are remitted to the North Carolina State Bar for the provision of legal services, expands the legal services that may be funded, and appropriates funds for those services.***

[As introduced, this bill was identical to H773, as introduced by Reps. M. Alexander, Glazier, Blue, which is currently in House Judiciary I, if favorable, Finance, if favorable, Appropriations.]

CURRENT LAW: Article 37A of the Chapter 7A-474.1, the Access to Civil Justice Act, enacted in 1989, provides a framework for funding legal services for financially eligible clients. A portion of certain court costs are remitted to the North Carolina State Bar for this purpose.

BILL ANALYSIS:

Sections 1.1 through 1.4 of the bill amends the portion of the court costs assessed for the support of the General Court of Justice, and remitted to the State Bar for the provision of legal services as a part of uniform costs and fees in the trial divisions of the State's courts, as follows:

FY 2009-2010 $4.05

FY 2010-2011 $6.05

FY 2011-2012 $8.05

FY 2012-2013 and thereafter $10.00

The following court costs are affected by Sections 1.1-1.4:

Section 1.1 -- criminal actions in superior or district court.

Section 1.2 -- civil actions in superior or district court.

Section 1.3 -- special proceedings in superior court.

Section 1.4 -- administrations of estates.

Section 1.5 of the bill provides that $50 of the fee collected by the clerk of superior court for support of the General Court of Justice in foreclosure actions shall be remitted to the State Bar for the provision of foreclosure services

Section 2.1 of the bill makes findings of the General Assembly concerning homeownership.

Section 2.2 of the bill appropriates from the General Fund to the North Carolina State Bar the sum of $1,800,000 of FY 2009-2010 and $1,800,000 for FY 2010-2011 in recurring funds to be allocated to the established legal services programs listed in G.S. 7A-474.2 for mortgage and foreclosure related legal assistance.

Section 3.1 of the bill amends a study provision from the 2008 budget bill requiring the Office of State Budget and Management, in consultation with the Department of Administration, to study the level of State assistance to county veterans service programs. The changes in the section: require the study to

include the number of claims filed with veterans service programs that required appeal, whether the assistance of an attorney was provided on appeal, and extends the report date to March 1, 2010.

Section 3.2 of the bill makes findings of the General Assembly concerning legal assistance for veterans.

Section 3.3 of the bill appropriates from the General Fund to the Division of Veterans Affairs, Department of Administration, $3,000,000 for the 2009-2010 fiscal year and $3,000,000 for the 2010-2011 fiscal year in recurring funds to contract with one or more of the established legal services programs under G.S. 7A-474.2 and Disability Rights of North Carolina to provide specified legal services to veterans and their families.

Section 4.1 of the bill amends the definition of "eligible client" under the Access to Civil Justice Act to include a veteran of the United States armed forces, reserves, or national guard, who is a resident of the State.

Section 4.2 of the bill amends the list of eligible cases under the Access to Civil Justice Act by: adding representation of eligible veterans in cases involving appeal of denial of veterans benefits; providing that specified assistance for persons over age 60 is also available to disabled persons; and adding assistance in special education matters to at-risk students from low-income families.

Section 5.1 of the bill makes findings of the General Assembly concerning education and legal assistance for children with disabilities.

Section 5.2 of the bill appropriates from the General Fund to the North Carolina State Bar $1,000,000 for the 2009-2010 fiscal year, and $1,000,000 for the 2010-2011 fiscal year in recurring funds to reduce school suspension, dropout rates, and juvenile court referrals by providing advocacy support in special education matters to at-risk students from low-income families. These funds are to be allocated to the established legal programs under G.S. 7A-474.2, Disability Rights of North Carolina and other organizations providing legal services to low-income families and individuals as may be approved by the North Carolina State Bar.

EFFECTIVE DATE:

Section 1.1 of this act becomes effective July 1, 2009, and applies to all costs assessed or collected on or after that date, except that in misdemeanor or infraction cases disposed of on or after that date by written appearance, waiver of trial or hearing, and plea of guilt or admission of responsibility pursuant to G.S. 7A-180(4) or G.S. 7A-273(2), in which the citation or other criminal process was issued before that date, the cost shall be the lesser of those specified in G.S. 7A-304(a), as amended by Section 1.1 of this act, or those specified in the notice portion of the defendant's or respondent's copy of the citation or other criminal process, if any costs are specified in that notice. Sections 1.2 through 1.5 of this act become effective July 1, 2009, and apply to fees assessed or collected on or after that date. The remainder of this act becomes effective July 1, 2009.

S663-SMRW-155(e1) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 323
Committee Substitute Favorable 4/27/09
Committee Substitute #2 Favorable 5/5/09

Short Title: Prevent the Theft of Scrap Metals. (Public)

Sponsors:

Referred to:

March 2, 2009

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE REQUIREMENTS REGARDING SECONDARY METALS RECYCLING OF REGULATED METALS PROPERTY IN ORDER TO PREVENT THE THEFT OF THIS PROPERTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 66-11 reads as rewritten:

"**§ 66-11. Dealing in regulated metals property; penalties.**

(a) Definitions. – As used in this section:

(1) "Law enforcement officer" means any duly constituted law enforcement officer of the State or of any municipality or county.

(2) "Regulated metals property" means all ferrous and nonferrous metals.

(3) "Secondary metals recycler" means any person, firm, or corporation in the State:

a. That, from a fixed location or otherwise, is engaged in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or

b. That has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, by methods including, but not limited to, the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metals, but not including the exclusive use of hand tools.

(4) "Fixed location" means any site occupied by a secondary metals recycler as the owner of the site or as a lessee of the site under a lease or other rental agreement providing for occupation of the site by the secondary metals recycler for a total duration of not less than 364 days.

(a1) Receipt Required. – A secondary metals recycler shall issue a receipt to the person delivering the regulated metals property for all purchase transactions in which the secondary metals recycler purchases regulated metals property. This receipt shall be signed by the person

delivering the materials, and the secondary metals recycler shall be able to provide documentation regarding the employee who completed the transaction.

(b) Records Required. –

(1) A secondary metals recycler shall maintain a record of all purchase transactions in which the secondary metals recycler purchases regulated metals property.

(2) The following information shall be maintained for transactions in which a secondary metals recycler purchases regulated metals property:

a. The name and address of the secondary metals recycler.

b. The name, initials, or other identification of the individual entering the information.

c. The date of the transaction.

d. The weight of the regulated metals property purchased.

e. The description made in accordance with the custom of the trade of the type of regulated metals property purchased and the physical address where the regulated metals were obtained by the seller, and a statement signed by the seller or the seller's agent certifying that the seller or the seller's agent has the lawful right to sell and dispose of the property.

f. The amount of consideration given for the regulated metals property.

g. The name and address of the vendor of the regulated metals property and the license plate number of the vehicle used to deliver the regulated metals.

h. A photocopy or electronic scan of the drivers license or state or federally issued photo identification card of the person delivering the regulated metals property to the secondary metals recycler. If the secondary metals recycler has a copy of the valid photo identification of the person delivering the regulated metals property on file, the secondary metals recycler must examine the photo identification, but may reference the photo identification that is on file without making a separate photocopy or electronic scan for each subsequent transaction. If the person delivering the regulated metals property does not have a drivers license or a state or federally issued photo identification card, the secondary metals recycler shall not complete the transaction.

i. A copy of the receipt required under subsection (a1) of this section when all the information required under subsection (a1) of this section is clear and legible or, in the event the copy of the receipt is not clear or not legible, the original receipt.

j. In transactions involving catalytic converters that are not attached to a vehicle, and central air conditioner evaporator coils or condensers, the person delivering the materials shall place next to that person's signature on the receipt required under subsection (a1) of this section, a clear impression of that person's index finger that is in ink and free of any smearing. A secondary metals recycler may elect to obtain the fingerprint electronically. If the secondary metals recycler has a copy of the fingerprint of the person delivering the nonferrous metal on file, the secondary metals recycler must examine the photo identification but may reference the fingerprint that is on file without making a separate fingerprint for each subsequent transaction.

(3) A secondary metals recycler shall keep and maintain the information required under this subsection for not less than two years from the date of the purchase of the regulated metals property. Records shall be securely maintained at all times and shall be destroyed in a manner that protects the identity of the owner of the property, the seller of the property, and the purchaser of the property.

(c) Inspection of Regulated Metals Property and Records. – During the usual and customary business hours of a secondary metals recycler, a law enforcement officer shall have the right to inspect ~~either~~ all of the following:

(1) Any and all purchased regulated metals property in the possession of the secondary metals recycler.

(2) Any and all records required to be maintained under subsection (b) of this section.

A secondary metals recycler shall make receipts for the purchase of regulated metals property available for pickup each regular workday if requested by the sheriff or chief of police of the county or the chief of police of the municipality in which the secondary metals recycler is located. The sheriff or the chief of police may request these receipts to be electronically transferred directly to the law enforcement agency. Records retained by a law enforcement agency shall be securely retained as required by law and destroyed in a manner that protects the identity of the owner of the property, the seller of the property, and the purchaser of the property.

(c1) Records submitted to any public law enforcement agency pursuant to this section are records of criminal investigations or records of criminal intelligence information as defined in G.S. 132-1.4 and are not public records as defined by G.S. 132-1.

(d) Purchase Limitations. – No secondary metals recycler shall do any of the following:

~~(1) Purchase regulated metals property for cash consideration from other than a fixed location.~~

~~(2) Purchase or receive regulated metals property from minors from other than a fixed location, provided that this provision does not apply to the purchase of aluminum in the form of beverage or food cans.~~

(3) Purchase any central air conditioner evaporator coils or condensers, or catalytic converters that are not attached to a vehicle, except that a secondary metals recycler may purchase these items from a company, contractor, or individual that is in the business of installing, replacing, maintaining, or removing these items, provided the secondary metals recycler is prohibited from paying cash or making payment of any kind for any central air conditioner evaporator coil or condenser in whole or in part or a catalytic converter that is not attached to a vehicle. The payment for these metals is to be made by check or money order made out to the company, contractor, or individual. Payment for these metals may also be made using a cash card system that captures the photograph of the person selling these metals if the secondary metals recycler maintains the photograph for 90 days.

(4) Purchase other nonferrous metal property not listed in subdivision (5) of this subsection for any cash consideration greater than one hundred dollars ($100.00) per transaction. The secondary metals recycler may purchase other nonferrous metal property for an amount in excess of one hundred dollars ($100.00) if the payment is made by check, money order, or a cash card system that captures the photograph of the person selling the nonferrous metal if the secondary metals recycler maintains the photograph for 90 days.

(5) Except as provided in subsection (g) of this section, purchase:

a. Any regulated metal marked with the initials or other identification of a telephone, cable, electric, water, or other public utility, or any brewer.
b. Any utility access cover.
c. Any street light pole or fixture.
d. Any road or bridge guard rail.
e. Any highway or street sign.
f. Any water meter cover.
g. Any metal beer keg, including any made of stainless steel that is clearly marked as being the property of the beer manufacturer.
h. Any traffic directional or control sign.
i. Any traffic light signal.
j. Any regulated metal marked with the name of a government entity.
k. Any property owned by a railroad and marked and otherwise identified as such.
l. Any historical marker or any grave marker or burial vase.

(d1) Retain Metals for Seven Days Before Selling or Altering. – Any secondary metals recycler owner convicted of a felonious violation of this Chapter, G.S. 14-71, 14-71.1, or 14-72 shall hold and retain any regulated metals product, except for iron and steel products, for seven days from the date of purchase before selling, dismantling, defacing, or in any manner altering or disposing of the regulated metals property.

(e) Right to Restitution. – The court may order a defendant to make restitution to the secondary metals recycler for any damage or loss caused by the defendant arising out of an offense committed by the defendant.

(f) Violations. – Unless the conduct is covered by some other provision of law providing greater punishment, any person knowingly and willfully violating any of the provisions of this section shall be guilty of a Class 1 misdemeanor for a first offense. A second or subsequent violation of this section is a Class I felony.

(g) Exemptions. – This section does not apply to:

(1) ~~This section shall not apply to purchases~~ Purchases of regulated metals property from a manufacturing, industrial, government, or other commercial vendor that generates or sells regulated metals property in the ordinary course of its business.

(2) Purchases of regulated metals property that involve only beverage containers.

(h) Preemption. – A county or municipality shall not enact any local law, ordinance, or regulation regulating secondary metals recyclers or regulated metals property that conflicts with this section, and this law preempts all existing laws, ordinances, or regulations."

SECTION 2. This act becomes effective October 1, 2009, and applies to purchases and offers of purchase that occur on or after that date.

HOUSE BILL 323:
Prevent the Theft of Scrap Metals

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 9, 2009
Introduced by:	Reps. Gulley, Tillis	**Prepared by:**	Giles S. Perry
Analysis of:	Third Edition		Committee Counsel

SUMMARY: House Bill 323 amends the law relating to secondary metals recyclers to:

- *requires secondary metals recyclers to issue a receipt to the person delivering regulated metals property.*
- *requires, for catalytic converters and certain central AC parts, that the receipt must have the fingerprint of the person selling the metals, and that payment may not be made in cash.*
- *limits cash transactions to $100, and requires a check, money order, or cash card be used.*
- *sets out a list of regulated metals that a recycler may not purchase, including metals from a telephone, cable, electric, water or other public utility.*
- *exempts beverage containers or purchases from government vendors that generate or sell regulated metals in the ordinary course of business.*

[As introduced, this bill was identical to S729, as introduced by Sen. Rucho, which is currently in Senate Judiciary I.]

CURRENT LAW:

In 2007, the law relating to secondary metals recyclers was amended to curtail the theft of metals. The law increased the record keeping requirements for secondary metals recyclers when purchasing certain metals to include:

- The physical address where regulated metals were obtained by the seller, and a statement signed by the seller certifying the lawful right to sell and dispose of the property.
- The license number of the vehicle used to deliver the regulated metals property.
- A photo or scan of the driver's license or state or federally issued photo identification card of the person delivering the regulated metals property. If the delivery person does not have valid photo identification, the transaction cannot be completed.

The law also added a requirement that the recycler make receipts of sales available at the end of each day if requested by local law enforcement. The penalty for second and subsequent violations of the law was increased to a Class I felony.

The law was also amended to add wireless and cable communications fixtures and equipment to the law creating criminal penalties for the willful injury or destruction of wires and fixtures of telephone, telegraph, and electric power lines. The penalty was increased from a Class 1 misdemeanor to a Class I felony.

Finally, the law created a new section to provide for the forfeiture of vehicles used to transport unlawfully obtained metals property, with certain exceptions.

BILL ANALYSIS:

House Bill 323 amends the current law governing purchase of regulated metals by secondary metals recyclers as follows:

Receipts (G.S. 66-11(a1))

- requires secondary metals recyclers to issue a receipt to the person delivering regulated metals property for purchase that is signed by the party delivering the material, and keep a record of the employee who completed the transaction.

Additional records required (G.S. 66-11(b))

- requires secondary metals recyclers to retain a clear and legible copy of the receipt for purchases, or the original receipt.
- for transactions involving an unattached catalytic converter or certain air conditioner parts, requires the receipt to have a fingerprint of the person delivering the material.
- requires that records required to be kept by secondary metals recyclers be securely maintained and properly destroyed.

Inspection/handling of records by law enforcement (G.S. 66-11(c) and (c1))

- clarifies existing law authorizing law enforcement, during regular business hours, to inspect metals property and related records.
- authorizes electronic transfer of secondary metals recycler records to law enforcement.
- requires that records retained by law enforcement be securely maintained and properly destroyed.
- provides that records retained by law enforcement are records of criminal investigations, and not public records.

Purchase limitations (G.S. 66-11(d))

- provides that unattached catalytic converters or specified air conditioner parts may only be purchased by a secondary metals recycler from a person or company in the business of installing, repairing, maintaining or removing them.
- prohibits all cash purchases of unattached catalytic converters or certain air conditioner parts by a secondary metals recycler. Provides that payment for these items must be by check, money order, or a cash card system that captures a photograph of the person selling them and retains the photo for 90 days.
- prohibits purchase by a secondary metals recycler of nonferrous metals for cash in excess of $100. Those purchases must be made by check, money, or a cash card system that captures a photograph of the seller. Photo must be retained for 90 days.
- prohibits purchase of certain metals property. This includes metals from telephone, cable, electric, water or other public utilities.

Exemptions (G.S. 66-11(g))

- adds two more exemptions from the current list of exemptions from the restrictions on secondary metals purchases: purchases from government vendors that generate or sell regulated metals in the ordinary course of business, and purchases of beverage containers.

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to purchases and offers of purchase that occur on or after that date.

Steven J. Rose and Karen Cochrane-Brown of the Research Division, contributed to this summary
H323-SMRW-154(e3) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 473
Senate Judiciary II Committee Substitute Adopted 6/2/09

Short Title: Magistrate Can Carry Gun in Courthouse. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A MAGISTRATE 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 magistrate who carries or possesses a concealed handgun in any portion of a building housing a court of the General Court of Justice if the magistrate (i) is in the building to discharge the magistrate's 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 place that is not accessible to the public when the weapon is not on the magistrate's 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.

HOUSE BILL 473:
Magistrate Can Carry Gun in Courthouse

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 10, 2009
Introduced by:	Reps. Hurley, Justus, Spear, Sutton	**Prepared by:**	R. Erika Churchill
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 473 would amend G.S. 14-269.4 to authorize a magistrate to carry a concealed handgun in a courthouse if the magistrate is there to discharge his or her official duties and has a valid concealed handgun permit issued pursuant to Article 54B of Chapter 14 of the General Statutes.***

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: House Bill 473 amends G.S. 14-269.4 to exempt magistrates from that section's prohibition against carrying a deadly weapon in a courthouse, by permitting them to carry or possess a concealed handgun in all parts of a building housing a court of the General Court of Justice if all of the following apply:

- The magistrate is in the building to discharge their official duties.
- The magistrate possesses a valid concealed handgun permit
- The magistrate has successfully completed weapons retention training substantially similar to that received by certified law enforcement officers.
- The magistrate secures the weapon *in a place that is not accessible to the public* when the weapon is not on his or her person.

EFFECTIVE DATE: When it becomes law.

BACKGROUND: Senate Bill 11, DA & Ass't DA/Concealed Gun in Courthouse, was given a favorable report by the Senate Judiciary I committee on May 12, 2009, and is currently in House Ways and Means/Broadband Connectivity. As currently written, that bill would permit a district attorney or assistant district to carry a deadly weapon in a courthouse, by permitting them to carry or possess a concealed handgun in all parts of a building housing a court of the General Court of Justice, **except a courtroom,** if all of the following apply:

- The district attorney or assistant district attorney is in the building to discharge their official duties.
- The district attorney or assistant district attorney possesses a valid concealed handgun permit
- The district attorney or assistant district attorney has successfully completed weapons retention training substantially similar to that received by certified law enforcement officers.
- The district attorney or assistant district attorney secures the weapon **in a locked compartment** when the weapon is not on his or her person.

Susan Sitze contributed to this summary.

Research Division *O. Walker Reagan, Director* *(919) 733-2578*

Attachment VII

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 473 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Clodfelter

1 moves to amend the bill on page 1, line 36
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the phrase "in a place that is not
4 accessible to the public" and substituting the
5 phrase
6 "in a locked compartment".
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SIGNED Daniel G Clodfelter

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT *Attachment VIII*

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 473 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Kinnaird
Sen.)

moves to amend the bill on page 1, line 30

( ) WHICH CHANGES THE TITLE

by inserting the phrase "other than a courtroom itself;" between "Justice" and "if" on that line.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE JUDICIARY I COMMITTEE
(Civil)

June 16, 2009
10:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Tuesday, June 16, 2009, at 10:00 a.m. in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin L. Nesbitt, Vice-Chairmen Senators Dan Clodfelter; Pete Brunstetter, and Josh Stein, members, Senators Charlie Albertson, Phil Berger, Dan Blue, Andrew Brock, Harry Brown, Malcolm Graham, Clark Jenkins, Ellie Kinnaird, Floyd McKissick, David Rouzer, and Jerry Tillman, Staff Counsel Giles Perry, Susan Sitze and Bill Patterson, Committee Assistant Jan Lee.

Chairman Nesbitt called the meeting to order and recognized the pages serving the committee meeting.

Representative Jennifer Weiss was recognized to explain H.B. 806 – Notice on Liens for HOA Assessments. A Proposed Committee Substitute was distributed and Senator Stein moved that it be adopted for consideration and the motion passed. Giles Parry, Counsel to the committee gave an analysis of the bill. There were concerns from the committee members and Karen Cochran-Brown, Staff Counsel was available to address these concerns. There were other concerns from the committee members and Hope Carmichael was recognized to speak for the Homeowners' Associations. Al Ripley with the North Carolina Justice Center was recognized to speak on concerns from the committee members. Representative Weiss said that the Clerks of Court support this bill. Due to so much uncertainty about the bill Senator Nesbitt appointed the following members to serve on a subcommittee to work out the differences; Senator Stein, Senator Blue and Senator McKissick. The bill was displaced.

Representative Parmon was recognized to explain Committee Substitute for H.B. 1464 – Clarify DV Laws/Arrest/Valid Protective Order. She said that H.B. 1464 just clarifies that the word "shall" does indeed mean "shall." Committee Counsel, Susan Sitze assisted in explaining the bill. There was concern about the wording of the bill and the bill was displaced for further work and will be brought back to the next meeting.

Representative Rhyne was recognized to explain Committee Substitute for H.B. 1106 – Amend Adoption Laws. Benton Wright, an adoption attorney from Greensboro was recognized so speak on the bill. After questions and discussion Senator Phil Berger moved for a favorable report and it passed. Senator Berger will handle the bill on the floor of the Senate.

Senator Clodfelter was recognized to explain H.B. 937 – Innocence Commission/Limited Witness Immunity. A Proposed Committee Substitute for H.B. 937 was distributed and

Senator Clodfelter moved that it be adopted for consideration and the motion passed. Senator Clodfelter explained the PCS for H.B. 937. Wade Smith and Chris Murma with the Innocence Commission were available to answer questions, if necessary. D.A.'s Conference took no position on the bill. Clark Everett, D.A. from Pitt County spoke on the bill. There was not enough time to complete the discussion and those that wanted to speak on the bill, so PCS for H.B. 937 will be continued at the next Judiciary I Committee Meeting.

The meeting was adjourned.

Copies of CS #2 for H.B. 806, Bill Analysis for PCS for H.B. 806, CS for H.B.1464, Bill Analysis for H.B. 1464, CS for HB. 1106, Bill Analysis for H.B. 1106, H.B. 937, PCS for H.B. 937, Bill Analysis for PCS for H.B. 937 are attached to these Minutes as Attachments 1,2,3,4,5,6,7,8,9, respectively.

Respectfully Submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W. Lee

Janette W. Lee
Committee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 806*
Committee Substitute Favorable 4/30/09
Committee Substitute #2 Favorable 5/11/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H806-CSRW-54 [v.6]

6/15/2009 7:30:31 PM

Short Title: Notice on Liens for HOA Assessments. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A HOMEOWNERS ASSOCIATION MAKE REASONABLE AND DILIGENT EFFORTS TO LOCATE AND NOTIFY A LOT OWNER UNDER THE PLANNED COMMUNITY ACT OR A UNIT OWNER UNDER THE CONDOMINIUM ACT PRIOR TO FILING A CLAIM OF LIEN FOR ASSESSMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47F-3-116 reads as rewritten:

"**§ 47F-3-116. Lien for assessments.**

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and

charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this section or G.S. 47F-3-120.

(e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the lot owner in the association's records. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the lot owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters, and no smaller than the largest print used elsewhere in the document: **'THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS**

ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW.' The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to all of the following: G.S. 1A-1, Rule 4(j)(1) a. or b.; G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and by mailing a copy of the lien by regular, first class mail, postage prepaid. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9)."

SECTION 2. G.S. 47C-3-116 reads as rewritten:

"**§ 47C-3-116. Lien for assessments.**

(a) Any assessment levied against a unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. Unless the declaration otherwise provides, fees, charges, late charges and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any unit owner unless the fee is expressly allowed in the declaration. Any lien secured by debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the unit) recorded before the docketing of the lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments or charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing thereof in the office of the clerk of superior court.

(d) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the unit owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses

incurred. The collection of debt and enforcement of a lien remain uncontested as long as the unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or proceedings authorized under subsection (d) of this section or G.S. 47C-4-117.

(e1) A unit owner may not be required to pay attorneys' fees and court costs until the unit owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the unit owner in the association's records. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. The notice shall set out the outstanding balance due as of the date of the notice and state that the unit owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the unit owner pays the outstanding balance within this period, then the unit owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the unit owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the unit owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the unit owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such unit which became due prior to acquisition of title to such unit by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners including such purchaser, and its heirs, successors and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters, and no smaller than the largest print used elsewhere in the document: **'THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW.'** The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to all of the following: G.S. 1A-1, Rule 4(j)(1) a. or b.; G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and by mailing a copy of the lien by regular, first class mail, postage prepaid. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been

attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9)."

SECTION 3. This act becomes effective October 1, 2009, and applies to claims of lien filed on or after that date.

HOUSE BILL 806:
Notice on Liens for HOA Assessments

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 15, 2009
Introduced by:	Reps. Weiss, Earle, Glazier, Cotham	**Prepared by:**	Giles S. Perry
Analysis of:	PCS to Third Edition H806-CSRW-54		Committee Counsel

SUMMARY: House Bill 806 (PCS) amends the North Carolina Planned Community Act and the North Carolina Condominium Act to:

- *require that owners' associations make efforts to ensure that its records contain the lot owner's current mailing address prior to filing the claim of lien.*
- *require that the claim of lien contain a conspicuous warning of the consequences of failure to pay the lien.*
- *require the person signing the claim of lien on behalf of the association to attach to and file with the lien a certificate attesting to the attempt of service on the record owner in accordance with G.S. 1A-1, Rule 4(j).*
- *provides that if service is not achieved, the association shall be deemed to have met the requirements set out for service, if specified methods of service are attempted.*

As introduced, this bill was identical to S961, as introduced by Sen. Nesbitt, which is currently in Senate Judiciary I.]

CURRENT LAW:

Under current law, when any homeowner or unit owner assessments levied against a lot or unit remain unpaid for 30 days, the association is authorized to file a claim of lien against the property in the office of the clerk of superior court. The law also provides that the association may use the power of sale foreclosure statute under Article 2A of Chapter 45 to enforce the lien.

BILL ANALYSIS: Section-by-section analysis of H 806(PCS):

Section 1 amends the North Carolina Planned Community Act:

- to impose a requirement on the homeowners' association to make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address prior to filing the claim of lien. This requirement is also added to the provision authorizing payment of attorney's fees and court costs by the lot owner, if the owner has been notified of the associations' intent to seek them.
- to impose a requirement that the claim of lien contain a conspicuous warning that if the lien is not paid, the association may proceed with foreclosure against the property.
- require the person signing the claim of lien on behalf of the association to attach to and file with the lien a certificate attesting to the attempt of service on the record owner.
- provides that if the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to all of the following: G.S. 1A-1, Rule 4(j)(1) a. or b.; G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and by mailing a copy of the lien by regular, first class mail, postage prepaid.

In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9)."

Section 2 makes identical changes in to the North Carolina Condominium Act.

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to claims of lien filed on or after that date.

BACKGROUND:

G.S. 1A-4 Rule 4. Process (next page)

(j) Process – Manner of service to exercise personal jurisdiction. – In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

(1) Natural Person. – Except as provided in subdivision (2) below, upon a natural person by one of the following:
   a. By delivering a copy of the summons and of the complaint to the natural person or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.
   b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.
   c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.
   d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.
   e. By mailing a copy of the summons and of the complaint by signature confirmation as provided by the United States Postal Service, addressed to the party to be served, and delivering to the addressee.

(2) Natural Person under Disability. – Upon a natural person under disability by serving process in any manner prescribed in this section (j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.
   a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made upon a guardian ad litem who has been appointed pursuant to Rule 17.
   b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

(3) The State. – Upon the State by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt. As used in this subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(4) An Agency of the State. –

a. Upon an agency of the State by personally delivering a copy of the summons and of the complaint to the process agent appointed by the agency in the manner hereinafter provided; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to said process agent; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the process agent, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. Every agency of the State shall appoint a process agent by filing with the Attorney General the name and address of an agent upon whom process may be served.

c. If any agency of the State fails to comply with paragraph b above, then service upon such agency may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General, or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

d. For purposes of this rule, the term "agency of the State" includes every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(5) Counties, Cities, Towns, Villages and Other Local Public Bodies. –

a. Upon a city, town, or village by personally delivering a copy of the summons and of the complaint to its mayor, city manager or clerk; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its mayor, city manager or clerk; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the mayor, city manager, or clerk, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. Upon a county by personally delivering a copy of the summons and of the complaint to its county manager or to the chairman, clerk or any member of the board of commissioners for such county; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its county manager or to the chairman, clerk, or any member of this board of commissioners for such county; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the county manager or to the chairman, clerk, or any member of the board of commissioners of that county, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

c. Upon any other political subdivision of the State, any county or city board of education, or other local public district, unit, or body of any kind (i) by personally delivering a copy of the summons and of the complaint to an officer or director thereof, (ii) by personally delivering a copy of the summons and of the complaint to an agent or attorney-in-fact authorized by appointment or by statute to be served or to accept service in its behalf, (iii) by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), or (iv) by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

d. In any case where none of the officials, officers or directors specified in paragraphs a, b and c can, after due diligence, be found in the State, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, such court or judge may grant an order that service upon the party sought to be served may be made by personally delivering a copy of

the summons and of the complaint to the Attorney General or any deputy or assistant attorney general of the State of North Carolina; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(6) Domestic or Foreign Corporation. – Upon a domestic or foreign corporation by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, or agent to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(7) Partnerships. – Upon a general or limited partnership:

a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to any general partner or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, delivering to the addressee, and obtaining a delivery receipt; or by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).

(8) Other Unincorporated Associations and Their Officers. – Upon any unincorporated association, organization, or society other than a partnership by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or member of the governing body to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(9) Foreign States and Their Political Subdivisions, Agencies, and Instrumentalities. – Upon a foreign state or a political subdivision, agency, or instrumentality thereof, pursuant to 28 U.S.C. § 1608

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1464
Committee Substitute Favorable 5/7/09

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.

HOUSE BILL 1464:
Clarify DV Laws/Arrest/Valid Protective Order

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 15, 2009
Introduced by:	Reps. Parmon, Womble	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	Second Edition		

SUMMARY: ***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: 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

HOUSE BILL 1106
Committee Substitute Favorable 5/4/09

Short Title: Amend Adoption Laws. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT AMENDING AND CLARIFYING VARIOUS PROVISIONS UNDER THE LAWS PERTAINING TO ADOPTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-109 reads as rewritten:

"**§ 48-1-109. Which agencies may prepare assessments and reports to the court.**

(a) Except as authorized in subsections (b) and (c) of this section, only a county department of social services in this State or an agency licensed by the Department may prepare preplacement assessments pursuant to Article 3 of this Chapter or reports to the court pursuant to Article 2 of this Chapter.

(b) A preplacement assessment prepared in another state may be used in this State only if:

(1) The prospective adoptive parent resided in the state where it was prepared; and

(2) The person or entity that prepared it was authorized by the law of that state to gather the necessary information.

An assessment prepared in another state that does not meet the requirements of this section and G.S. 48-3-303(c) through (h) must be updated by a county department of social services in this ~~State or~~State, an agency licensed by the ~~Department~~ Department, or a person or entity authorized to gather the necessary information pursuant to the laws of the state where the prospective adoptive parent resides before being used in this State.

(c) An order for a report to the court must be sent to a county department of social services in this ~~State or~~State, an agency licensed by the ~~Department.~~Department, or a person or entity authorized to prepare home assessments for the purpose of adoption proceedings under the laws of the petitioner's state of residence. If the petitioner moves to a different state before the agency completes the report, the agency shall request a report pursuant to the Interstate Compact on the Placement of Children under Article 38 of Chapter 7B of the General Statutes from ~~an agency~~a person or entity authorized to prepare ~~such reports in the petitioner's new state of residence pursuant to the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes.~~home assessments for the purpose of adoption proceedings under the laws of the petitioner's new state residence."

SECTION 2.1. G.S. 48-2-301(c) reads as rewritten:

"(c) If the individual who files the petition is unmarried, no other individual may join in the ~~petition.~~petition, except that a man and a woman who jointly adopted a minor child in a foreign country while married to one another must readopt jointly as provided in G.S. 48-2-205."

SECTION 2.2. G.S. 48-2-205 reads as rewritten:

"**§ 48-2-205. Recognition of adoption decrees from other jurisdictions.**

A final adoption decree issued by any other state must be recognized in this State. Where a minor child has been previously adopted in a foreign country by a petitioner or petitioners seeking to readopt the child under the laws of North Carolina, the adoption order entered in the foreign country may be accepted in lieu of the consent of the biological parent or parents or the guardian of the child to the ~~readoption.~~readoption. A man and a woman who adopted a minor child in a foreign country while married to one another must readopt jointly, regardless of whether they have since divorced. If either does not join in the petition, he or she must be joined as a necessary party as provided in G.S. 1A-1, Rule 19."

SECTION 3. G.S. 48-2-401 is amended by adding the following new subsection to read:

"(g) Issuance of a summons is not required to commence an adoption proceeding under this Chapter."

SECTION 4. G.S. 48-2-501(d) reads as rewritten:

"(d) ~~As an exception to this section,~~The following exceptions apply in this section:

(1) ~~in~~ In any stepparent adoption under Article 4 of this Chapter in which the minor has lived with the stepparent for at least the two consecutive years immediately preceding the filing of the petition, the court may order a ~~report, but it~~report. However, the court is not required to order a report unless the minor's consent is to be waived, the minor has revoked a consent, or both of the minor's parents are dead.

(2) In any adoption of a minor by the minor's grandparent in which the minor has lived with the grandparent for at least the two consecutive years immediately preceding the filing of the petition, the court may order a report. However, the court is not required to order a report unless the minor's consent is to be waived, the minor has revoked a consent, or the minor is eligible for adoption assistance pursuant to G.S. 108A-49."

SECTION 5. G.S. 48-3-608(a) reads as rewritten:

"(a) A consent to the adoption of any infant who is in utero or any minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the revocation period falls on a ~~weekend or North Carolina or federal holiday,~~Saturday, Sunday, or a legal holiday when North Carolina courthouses are closed for transactions, then the revocation period extends to the next business day. The individual who gave the consent may revoke by giving written notice to the person specified in the consent. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the person to whom consent was given at the address specified in the consent. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the person to whom consent was given at the address specified in the consent."

SECTION 6. G.S. 48-3-706(a) reads as rewritten:

"(a) A relinquishment of any infant who is in utero or any minor may be revoked within seven days following the day on which it is ~~executed,~~executed by the infant or minor's parent or guardian, inclusive of weekends and holidays. If the final day of the period falls on a ~~weekend or a North Carolina or federal holiday,~~Saturday, Sunday, or a legal holiday when North Carolina courthouses are closed for transactions, then the revocation period extends to the next business day. The individual who gave the relinquishment may revoke by giving written notice to the agency to which the relinquishment was given. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States

mail, postage prepaid, addressed to the agency at the agency's address as given in the relinquishment. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the agency at the agency's address as given in the relinquishment."

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

HOUSE BILL 1106: Amend Adoption Laws

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 12, 2009
Introduced by:	Reps. Rhyne, Goodwin	**Prepared by:**	Giles S. Perry
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 1106 amends and clarifies various statutory provisions pertaining to adoption.

CURRENT LAW: Chapter 48 of the General Statutes governs procedure for adoption.

BILL ANALYSIS: House Bill 1106 makes the following changes to the adoption law of the State:

Section 1 of the bill amends the law governing **adoption preplacement assessments** and **reports to the court** to:

- provide that a preplacement assessment prepared in another state, and that does not meet all of the requirements of this State, may be updated by a person or entity authorized to gather the necessary information pursuant to the laws of the state where the prospective adoptive parents reside.
- provide that an order for a report to the court may be sent to a person or entity authorized under the laws of the petitioner's state of residence to prepare home assessments for adoption proceedings.
- clarifies that if the petitioner moves to a different state before the agency completes the report, the agency must request a report pursuant to the Interstate Compact on the Placement of Children under Article 38 of Chapter 7B from a *person or entity* authorized to prepare home assessments for the purpose of adoption proceedings under the laws of the petitioner's new state of residence.

Sections 2.1 and 2.2 amend the law governing **who may file a petition for adoption** to clarify that it applies to minor children, and to provide that a man and a women who jointly readopt a minor child in a foreign country while married to each other must readopt jointly in this State, regardless of whether they have since divorced. If either does not join in the petition to readopt, he or she must be joined as a necessary party.

Section 3 amends the law governing **notice of adoption proceedings** to provide that issuance of a summons is not required to commence an adoption proceeding.

Section 4 amends the law governing **reports that must be made to the court** to assist the court in determining whether the proposed adoption is in the minor's best interests to add an **exception to the requirement for the report** in any adoption of a minor by the minor's grandparent in which the minor has lived with the grandparent for at least the two consecutive years immediately preceding the filing of the petition, the court may order a report. The court is not required to order a report unless the minor's consent is to be waived, the minor has revoked a consent, or the minor is eligible for adoption assistance pursuant to G.S. 108A 49.

Section 5 clarifies the law governing the seven day period for **revocation of consent for adoption** to provide that if the final day of the revocation period falls on a Saturday, Sunday, or a legal holiday when North Carolina courthouses are closed for transactions, then the revocation period extends to the next business day.

Section 6 of the bill amends the law concerning **revocation of relinquishment of a child** to clarify that a relinquishment is executed by the infant or minor's parent or guardian. This section also clarifies that if the final day of the seven day period when a relinquishment may be revoked falls on a Saturday, Sunday, or a legal holiday when North Carolina courthouses are closed for transactions, then the period when a relinquishment may be revoked extends to the next business day.

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

H1106-SMRW-159(e2) v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

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.

Attachment 8

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 937
PROPOSED SENATE COMMITTEE SUBSTITUTE H937-CSSA-50 [v.1]

6/15/2009 5:38:18 PM

Short Title: Innocence Commn./Limited Witness Immunity. (Public)

Sponsors:

Referred to:

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. However, the Commission chair shall not order the witness to testify or produce other information that would incriminate the witness in the prosecution of any offense other than an offense for which the witness is granted immunity under this subsection. 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:	Senate Judiciary I	**Date:**	June 15, 2009
Introduced by:	Reps. Glazier, Ross, Stam, Lucas	**Prepared by:**	Susan Sitze*
Analysis of:	PCS to First Edition H937-CSSA-50		Committee Counsel

SUMMARY: ***The PCS for 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: The PCS for 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 PCS adds a provision that the Commission chair shall not order the witness to testify or produce other information that would incriminate the witness in the prosecution of any offense other than an offense for which the witness is granted immunity under this subsection.

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 Drupti Chauhan and Tim Hovis, Staff Attorneys

H937-SMSA-99(CSSA-50) v1

SENATE JUDICIARY I COMMITTEE
(Civil)

June 23, 2009
10:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Tuesday, June 23, 2009, in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin L. Nesbitt, Vice-Chairmen Dan Clodfelter, Pete Brunstetter, and R. C. Soles, members, Senators Phil Berger, Dan Blue, Andrew Brock, Debbie Clary, Malcolm Graham, David Hoyle, Clark Jenkins, Ellie Kinnaird, Floyd McKissick, David Rouzer and Jerry Tillman, Staff Counsel, Erika Churchill, Giles Perry, Susan Sitze and Bill Patterson, Committee Assistant Jan Lee.

Chairman Nesbitt called the meeting to order and welcomed the pages serving the committee today.

Representative Angela Bryant was recognized to explain Committee Substitute for H.B. 1330 – Utilities/Collectors/Debt Collection. Giles Perry, staff attorney, gave an analysis of the bill and discussion by the committee followed. Kathy Hawkins with Progress Energy was recognized for comments on the bill. Senator McKissick moved for a favorable report for CS #2 for H.B. 1330 and the motion carried.

Representative Bryant was again recognized to explain H.B. 1329 – Consolidate Expunction Statutes. A Proposed Committee Substitute for H.B. 1329 was distributed to the committee and Senator Blue moved that it be adopted for discussion. Senator Soles asked that the bill be displaced. Senator Nesbitt told the members that the bill would only be discussed today and that no vote would be taken. Susan Sitze, Committee Counsel was recognized to give an analysis of the bill. Discussion followed. Senator Berger asked for clarification. Senator Nesbitt pointed out an inconsistency in the statutes. Senator Berger agreed that age at the time of offense should be clarified. The bill was displaced.

Senator Nesbitt told the committee that H.B. 726 – Clarify Expunctions, listed on the Agenda for today was displaced at the request of the bill sponsor, Representative Moore.

Senator Nesbitt recognized Senator Blue to explain H.B. 1267 – Amend Liability of Social Networking Sites. After Senator Blue's explanation, Erika Churchill, Committee Counsel, was recognized for an analysis of the bill. Senator Blue moved to amend the bill and the motion carried. Senator Blue explained that the amendment took out "criteria and adopt rules" and added "standards." Senator Hoyle moved that the amendment be incorporated into a new Proposed Committee Substitute and that it be given a favorable report, unfavorable as to original bill. Will Castleberry, State Policy for AOL.com. was recognized for further comments. Greg McCloud with the Attorney General's Office was

recognized to answer questions from the committee. Will Castleberry, State Policy for AOL.com was again recognized to speak and answer questions. Senator Hoyle's motion was before the committee and passed.

The meeting adjourned.

Copies of CS for House Bill 1330, Bill Analysis for CS for H.B. 1330, Info sheet on Town of Scotland Neck, Progress Energy Service Agreement, CS #2 for H.B. 1329, PSCS for H.B. 1329, Bill Analysis for PCS for H.B. 1329, Bill Analysis for H.B. 1329 from Rep. Angela Bryant, CS for H.B. 726, H.B. 1267, Amendment for H.B. 1267, Bill Analysis for H.B. 1267are attached to these Minutes as Attachments 1,2,3,4,5,6,7,8,9,10,11,12 respectively.

Respectfully Submitted,

Senator Martin L. Nesbitt
Chairman

Janette W. Lee
Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 4

HOUSE BILL 1330

Committee Substitute Favorable 5/4/09
Committee Substitute #2 Favorable 5/13/09
Fourth Edition Engrossed 5/14/09

Short Title: Utilities/Collectors/Debt Collection. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT PROHIBITING PUBLIC UTILITIES, ELECTRIC MEMBERSHIP CORPORATIONS, TELEPHONE MEMBERSHIP CORPORATIONS, AND CITIES AND COUNTIES THAT OPERATE PUBLIC ENTERPRISES FROM USING CERTAIN DEBT COLLECTION PRACTICES THAT RESULT IN A CUSTOMER BEING LIABLE FOR THE PAST DUE AND UNPAID DEBTS OF ANOTHER PERSON.

The General Assembly of North Carolina enacts:

SECTION 1. Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read as follows:

"**§ 62-159.1. Debt collection practices.**

(a) A public utility, electric membership corporation, and telephone membership corporation shall not do any of the following in its debt collection practices:

(1) Suspend or disconnect service to a customer because of a past-due and unpaid balance for service incurred by another person who resides with the customer after service has been provided to the customer's household, unless one or more of the following apply:

a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.

b. The person was a member of the customer's current household when the service was established and the person had an unpaid balance for service at that time.

c. The person is or becomes responsible for the bill for the service to the customer.

(2) Require that in order to continue service, a customer must agree to be liable for the delinquent account of any other person who will reside in the customer's household after the customer receives the service, unless one or more of the following apply:

a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.

b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.

(b) Notwithstanding the provisions of subsection (a) of this section, if a customer misrepresents his or her identity in a written or verbal agreement for service or receives service using another person's identity, the public utility, electric membership corporation, and telephone membership corporation shall have the power to collect a delinquent account using any remedy provided by law for collecting and enforcing private debts from that customer."

SECTION 2. G.S. 153A-277 is amended by adding two new subsections to read as follows:

"(b1) A county shall not do any of the following in its debt collection practices:

(1) Suspend or disconnect service to a customer because of a past-due and unpaid balance for service incurred by another person who resides with the customer after service has been provided to the customer's household, unless one or more of the following apply:

a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.

b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.

(2) Require that in order to continue service, a customer must agree to be liable for the delinquent account of any other person who will reside in the customer's household after the customer receives the service, unless one or more of the following apply:

a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.

b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.

(b2) Notwithstanding the provisions of subsection (b1) of this section, if a customer misrepresents his or her identity in a written or verbal agreement for service or receives service using another person's identity, the county shall have the power to collect a delinquent account using any remedy provided by subsection (b) of this section from that customer."

SECTION 3.(a) G.S. 160A-314 is amended by adding two new subsections to read as follows:

"(b1) A city shall not do any of the following in its debt collection practices:

(1) Suspend or disconnect service to a customer because of a past-due and unpaid balance for service incurred by another person who resides with the customer after service has been provided to the customer's household, unless one or more of the following apply:

a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.

b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.

(2) Require that in order to continue service, a customer must agree to be liable for the delinquent account of any other person who will reside in the customer's household after the customer receives the service, unless one or more of the following apply:

a. The customer and the person were members of the same household at a different location when the unpaid balance for service was incurred.

b. The person was a member of the customer's current household when the service was established, and the person had an unpaid balance for service at that time.

(b2) Notwithstanding the provisions of subsection (b1) of this section, if a customer misrepresents his or her identity in a written or verbal agreement for service or receives service using another person's identity, the city shall have the power to collect a delinquent account using any remedy provided by subsection (b) of this section from that customer."

SECTION 3.(b) G.S. 160A-314(d) reads as rewritten:

"(d) Notwithstanding subsection (b1) of this section, rents,~~Rents,~~ rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the owner of the premises served when:

(1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter.

(2) Charges made for use of a sewage system are billed separately from charges made for the use of a water distribution system."

SECTION 4. G.S. 58-70-110 is amended by adding a new subdivision to read as follows:

"**§ 58-70-110. Deceptive representation.**

No collection agency shall collect or attempt to collect a debt or obtain information concerning a consumer by any fraudulent, deceptive or misleading representation. Such representations include, but are not limited to, the following:

...

(8) Communicating with the consumer in violation of the provisions of G.S. 62-159.1(a), 153A-277(b1), or 160A-314(b1)."

SECTION 5. G.S. 75-54 is amended by adding a new subdivision to read as follows:

"**§ 75-54. Deceptive representation.**

No debt collector shall collect or attempt to collect a debt or obtain information concerning a consumer by any fraudulent, deceptive or misleading representation. Such representations include, but are not limited to, the following:

...

(8) Communicating with the consumer in violation of the provisions of G.S. 62-159.1(a), 153A-277(b1), or 160A-314(b1)."

SECTION 6. This act becomes effective July 1, 2009.

HOUSE BILL 1330: Utilities/Collectors/Debt Collection

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 17, 2009
Introduced by:	Reps. Bryant, Adams, Jones	**Prepared by:**	Giles S. Perry Committee Counsel
Analysis of:	PCS to Fourth Edition H1330-CSTD-43		

SUMMARY: House Bill 1330 (PCS) would prohibit utilities, electric membership corporations, telephone membership corporations, and cities and counties that operate public enterprises from using certain debt collection practices.

CURRENT LAW: Article 70 of Chapter 58 provides the Insurance Commission regulates "Collection Agencies." Collection agencies include in-house collection agencies as long as the collection service operates under a different name than the business. Regulated telephone companies are specifically excluded from the definition of collection agencies. Article 2 of Chapter 75 of the General Statues regulates "debt collectors." Debt collectors are any person acting to collect a debt other than persons subject to the regulations under Article 70 of Chapter 58. Both Articles have prohibitions on the actions that can be taken to collect a debt.

BILL ANALYSIS:

Sections 1, 2, and 3(a). Prohibits a public utility, an electric membership corporation, a telephone membership corporation and a city or county that operate a public enterprise from suspending or disconnecting service to an individual due to the debt of another person who resides with the customer unless one or more of the following apply:

1. The customer and the other person were members of the same household at a different location when the unpaid balance for service was incurred.
2. The person was a member of the customer's current household at the time service was established and the person had an unpaid balance for service at that time.
3. The person seeks to have his or her name placed on the customer's account. *(PCS makes this applicable to cities or counties.)*

Also prohibits a public utility, an electric membership corporation, a telephone membership corporation, and a city or county that operate a public enterprise from requiring a customer to assume the debt of another person who will reside in the customer's household in order to continue service unless one of the following apply:

1. The customer and the other person were members of the same household at a different location.
2. The person was a member of the customer's current household at the time service was established.

A public utility, an electric membership corporation, a telephone membership corporation, and a city or county that operate a public enterprise are not prohibited from using any remedy to collect a debt if a customer misrepresents his or her identity to receive service.

Section 3.(b) Provides that the prohibition on these practices does not apply to cities that operate a public enterprise in collecting legal obligations from the owners of multi-unit properties when the amount being collected is for a service that is rendered to multiple tenants, but measured by only 1 meter.

Sections 4 and 5. Makes conforming changes to the statutes regulating collection agencies and debt collectors to include the prohibited actions in Sections 1-3 of the bill as fraudulent, deceptive, or misleading representations that are prohibited by those acts.

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

H1330-SMRW-165(CSTD-43) v1

From

wn of Scotland Neck
P.O. Box 537
land Neck, N.C. 27874
) 826-3152 Fax (252) 826-2107

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
RALEIGH, NC 27603-5925
PHONE (919) 733-5878
FAX (919) 733-3113
ANGELAB@NCLEG.NET
WWW.NCLEG.NET

HOME ADDRESS:
717 WEST END STREET
ROCKY MOUNT, NC 27803
(252) 442-4022
(703) 783-8553 FAX

_____ MI

Co-Applicant _____
Last First

_____
ther

_____
DL #

_____
D.O.B.

_____
SSN D.O.B.

_____
Home Phone Number

_____
Home Phone #

_____
Work Phone Number

_____
Work Phone #

_____
Employer

_____
Employer

Service Address _____

Mailing Address _____

Previous Address _____

Occupants _____

Previous Utilities Company _____

Do You Own The Home? ____ yes ____ no

Mortage Company/Landlord _____

This is the policy of the Town of Scotland Neck to discontinue all services to customers by reason of non-payment of bills. Payment schedule is printed on the back of all utility bills. Anyone to be found living with a tenant who owes money from their own account will cause the utilities to be disconnected.
Co-Applicant certifies that the above applicant will reside at this address.

Applicant Signature _____ **Date** _____

Co-Applicant Signature _____ **Date** _____

This fax was received by GFI FAXmaker fax server. For more information, visit: http://www.gfi.com

Progress Energy – Service Agreement

Any suspension of the delivery of electricity by Company or termination of the Agreement upon any authorized grounds shall in no wise operate to relieve Customer of his liability to pay for electricity supplied, nor shall it relieve Customer (1) of his liability for the payment of minimum monthly charges during the period of suspension, nor (2) of his liability for damages, if the Agreement has been terminated, in the amount of (a) the minimum monthly charges which would have been payable during the unexpired term of the Agreement, plus (b) the termination charges provided for in paragraph 1(g) above. Whenever the supply of electricity is suspended for any authorized reason, Company will make a charge of $30.00 for the restoration of service made during the normal business hours of Company's office or $75.00 for the restoration of service made during all other hours.

2. CONDITIONS OF SERVICE

(a) Company is not obligated to supply electricity to Customer unless and until: (1) Company's form of Application for Supply of Electricity is executed by Customer and accepted by Company; (2) in cases where it is necessary to cross private property to deliver electricity to Customer, Customer conveys or causes to be conveyed to Company, without cost to Company, a right-of-way easement, satisfactory to Company, across such private property for the construction, maintenance, and operation of Company's lines and facilities, necessary to the delivery of electricity by Company to Customer, provided, however, in the absence of a formal conveyance, Company, nevertheless, shall be vested with an easement over Customer's premises authorizing it to do all things necessary to the construction, maintenance, and operation of its lines and facilities for such purpose; (3) any inspection certificates or permits that may be required by law in the local area are furnished to Company.

(b) If Company installs a substation or other facilities for service to Customer, any available capacity of such facilities not needed to supply Customer may be used by Company to supply others.

(c) Company may refuse to furnish electric service to any Applicant, or Customer, who at the time is indebted to Company for electric service previously supplied to such Applicant or Customer, or any other member of his household, or business, in any area served by Company, except that an applicant for residential service shall not be denied service for failure to pay such bills for classes of nonresidential service.

Similar for Duke

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NORTH CAROLINA HOUSE OF REPRESENTATIVES
7TH DISTRICT - HALIFAX AND NASH COUNTIES

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 1329
Committee Substitute Favorable 4/29/09
Committee Substitute #2 Favorable 5/11/09

Short Title: Consolidate Expunction Statutes. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE ALL STATUTES RELATED TO EXPUNCTION OF RECORDS IN ONE ARTICLE OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.**

(a) Whenever any person who has not yet attained the age of 18 years and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.

(3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a

traffic violation under the laws of this State (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the offense in question or during the two-year period following that conviction, whichever applies.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

(b) If the court, after hearing, finds that the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner had not attained the age of 18 years at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment or information, or trial, or response to any inquiry made of the person for any purpose. The court shall also order that the said conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction as the result of a criminal charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief of police, or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(c) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina."

SECTION 2. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.**

(a) Whenever a person is discharged, and the proceedings against the person dismissed, pursuant to G.S. 90-96(a), and the person was not over 21 years of age at the time of the offense, the person may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-96(c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation following the decision to defer further proceedings on the offense in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him dismissed and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff, chief of police, or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing, that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(c) Whenever any person who has not previously been convicted of an offense under Article 5 of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or by possessing

drug paraphernalia as prohibited by G.S. 90-113.21 or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-96(c)) all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.21 or (ii) a felony under G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been canceled and expunged under the provisions of this subsection, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions

have been canceled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 of Chapter 90 of the General Statutes has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this subsection.

(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 3. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.**

(a) Whenever a person is discharged and the proceedings against the person dismissed under G.S. 90-113.14(a), such person, if he was not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-113.14(c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him dismissed and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the

order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff, chief of police, or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(b) Whenever any person is charged with a misdemeanor under Article 5A of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, upon dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(c) Whenever any person who has not previously been convicted of an offense under Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-113.14(c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered

shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this subsection, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article."

SECTION 4. G.S. 14-50.30 reads as rewritten:

"**§ 14-50.30. Expunction of records.**

~~(a)~~ ~~Whenever any~~ Any person who has not yet attained the age of 18 years and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state, may be eligible to apply for expunction of certain offenses under this Article pursuant to G.S. 15A-145.1.~~pleads guilty to or is guilty of (i) a Class H felony under this Article or (ii) an enhanced offense under G.S. 14-50.22, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:~~

~~(1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.~~

~~(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.~~

~~(3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.~~

~~(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the offense in question or during the two-year period following that conviction, whichever applies.~~

~~(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.~~

~~The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.~~

~~(b) If the court, after hearing, finds that the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner had not attained the age of 18 years at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose. The court shall also order that the said conviction be expunged from the records of the court, and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction as the result of a criminal charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.~~

~~(c) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.~~"

SECTION 5. G.S. 90-96 reads as rewritten:

"**§ 90-96. Conditional discharge ~~and expunction of records~~ for first offense.**

(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or is found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under

this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under this Article. Discharge and dismissal under this section or G.S. 90-113.14 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Controlled Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-95(a)(3) or G.S. 90-113.21 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Health and Human Services pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

(1) There is no drug education school within a reasonable distance of the defendant's residence; or

(2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subdivision (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

For the purposes of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or 90-113.21 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the course, or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke probation and/or deny application for expunction of all recordation of

defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the ~~dismissal~~ discharge of such person, and ~~discharge~~ dismissal of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(a).~~may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:~~

~~(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;~~

~~(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;~~

~~(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation following the decision to defer further proceedings on the offense in question.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.~~

~~If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.~~

~~The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the

Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to Judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article or a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(b).~~such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.~~

(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.2(c).~~the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.~~

~~The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to the petitioner's arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited in G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or~~

~~misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.~~

~~The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been canceled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been canceled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article.~~

~~(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent.~~"

SECTION 6. G.S. 90-113.14 reads as rewritten:

"**§ 90-113.14. Conditional discharge ~~and expunction of records~~ for first offenses.**

(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A or 5B of Chapter 90 pleads guilty to or is found guilty of inhaling or possessing any substance having the property of releasing toxic vapors or fumes in violation of Article 5A of Chapter 90, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent

convictions. Discharge and dismissal under this section or G.S. 90-96 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge or dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, the "North Carolina Controlled Substances Act", Article 5, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-113.10 or 90-113.11 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Health and Human Services pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

(1) There is no drug education school within a reasonable distance of the defendant's residence; or

(2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subsection (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

For the purpose of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or 90-113.21 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the course, or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke probation and/or deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(a).~~may apply to the court for an order to expunge from all official~~

~~records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:~~

~~(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;~~

~~(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;~~

~~(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.~~

~~If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.~~

~~The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Commission, the names of all persons convicted under such Articles, together with the offense or offenses of which such persons were convicted. The clerk shall also file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Court shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 or 5A has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21 upon dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(b).~~such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment, or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment, or information, or trial in response to any inquiry made of him for any purpose.~~

(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.3(c).~~the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.~~

~~The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge~~

~~makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.~~

~~The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article.~~"

SECTION 7. This act becomes effective December 1, 2009, and applies to petitions for expunctions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1329
Committee Substitute Favorable 4/29/09
Committee Substitute #2 Favorable 5/11/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1329-CSSA-52 [v.4]

6/17/2009 9:16:38 PM

Short Title: Consolidate Expunction Statutes. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE ALL STATUTES RELATED TO EXPUNCTION OF RECORDS IN ONE ARTICLE OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.**

(a) Whenever any person who has not yet attained the age of 18 years and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, or has been discharged and had the proceedings against the person dismissed pursuant to G.S. 14-50.29, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.

(3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the offense in question or during the two-year period following that conviction, whichever applies.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

(b) If the court, after hearing, finds that (i) the petitioner was dismissed and the proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner had not attained the age of 18 years at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment or information, or trial, or response to any inquiry made of the person for any purpose. The court shall also order that the said conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction as the result of a criminal charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief of police, or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(c) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina."

SECTION 2. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.**

(a) Whenever a person is discharged, and the proceedings against the person dismissed, pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the offense, the person may apply to the court for an order to expunge from all official records

(other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-96(c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation following the decision to defer further proceedings on the offense in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him dismissed and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff, chief of police, or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing, that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge

such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(c) Whenever any person who has not previously been convicted of an offense under Article 5 of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-96(c)) all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting

agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been canceled and expunged under the provisions of this subsection, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been canceled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 of Chapter 90 of the General Statutes has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this subsection.

(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 3. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.**

(a) Whenever a person is discharged and the proceedings against the person dismissed under G.S. 90-113.14(a) or (a1), such person, if he was not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-113.14(c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him dismissed and that he was not over 21 years of age at the time of the offense, it

shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff, chief of police, or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(b) Whenever any person is charged with a misdemeanor under Article 5A of Chapter 90 of the General Statutes or possessing drug paraphernalia as prohibited by G.S. 90-113.22, upon dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(c) Whenever any person who has not previously been convicted of an offense under Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-113.14(c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by G.S. 90-113.22, that he was not over 21 years of age at the time of the offense, that he has been

of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this subsection, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5A of Chapter 90 of the General Statutes has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this subsection."

SECTION 4. G.S. 14-50.29(d) reads as rewritten:

"(d) Upon discharge and dismissal pursuant to this section, the person may apply for an order to expunge the complete record of the proceedings resulting in the dismissal and discharge, pursuant to the procedures and requirements set forth in ~~G.S. 14-50.30(a).~~G.S. 15A-145.1. ~~If the court determines, after hearing, that such person was dismissed and the proceedings against the person discharged and that the person had not yet attained 18 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information.~~"

SECTION 5. G.S. 14-50.30 reads as rewritten:

"**§ 14-50.30. Expunction of records.**

~~(a)~~ ~~Whenever any~~ Any person who has not yet attained the age of 18 years and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state, may be eligible to apply for expunction of certain offenses under this Article pursuant to G.S. 15A-145.1.~~pleads guilty to or is guilty of (i) a Class H felony under this Article or (ii) an enhanced offense under G.S. 14-50.22, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two~~

~~years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:~~

~~(1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.~~

~~(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.~~

~~(3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.~~

~~(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the offense in question or during the two-year period following that conviction, whichever applies.~~

~~(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.~~

~~The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.~~

~~(b) If the court, after hearing, finds that the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner had not attained the age of 18 years at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose. The court shall also order that the said conviction be expunged from the records of the court, and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction as the result of a criminal charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State~~

~~Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.~~

~~(c) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.~~"

SECTION 6. G.S. 90-96 reads as rewritten:

"**§ 90-96. Conditional discharge ~~and expunction of records~~ for first offense.**

(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or is found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article or by possessing drug paraphernalia as prohibited by ~~G.S. 90-113.21,~~G.S. 90-113.22, or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under this Article. Discharge and dismissal under this section or G.S. 90-113.14 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Controlled Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-95(a)(3) or ~~G.S. 90-113.21~~G.S. 90-113.22 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Health and Human Services pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

(1) There is no drug education school within a reasonable distance of the defendant's residence; or

(2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subdivision (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

Upon fulfillment of the terms and conditions of the probation, the court shall discharge such person and dismiss the proceedings against the person.

For the purposes of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or ~~90-113.21~~90-113.22 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation pursuant to this subsection and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section.~~G.S. 15A-145.2. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the ~~course,~~course as provided in G.S. 90-96.01(b), or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke ~~probation and/or~~ probation, shall not discharge such person, shall not dismiss the proceedings against the person, and shall deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section:~~G.S. 15A-145.2. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the ~~dismissal~~ discharge of such person, and ~~discharge~~ dismissal of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(a).~~may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:~~

~~(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;~~

~~(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;~~

~~(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation~~

~~following the decision to defer further proceedings on the offense in question.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.~~

~~If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.~~

~~The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to Judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article or a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(b).~~such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.~~

(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by ~~G.S. 90-113.21,~~G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.2(c).~~the court may, upon application of the~~

~~person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.~~

~~The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to the petitioner's arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited in G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.~~

~~The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been canceled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been canceled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article.~~

~~(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent.~~"

SECTION 7. G.S. 90-113.14 reads as rewritten:

"**§ 90-113.14. Conditional discharge ~~and expunction of records~~ for first offenses.**

(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A or 5B of Chapter 90 pleads guilty to or is found guilty of inhaling or possessing any substance having the property of releasing toxic vapors or fumes in violation of Article 5A of Chapter 90, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions. Discharge and dismissal under this section or G.S. 90-96 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge or dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, the "North Carolina Controlled Substances Act", Article 5, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-113.10 or 90-113.11 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Health and Human Services pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

(1) There is no drug education school within a reasonable distance of the defendant's residence; or

(2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subsection (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

Upon fulfillment of the terms and conditions of the probation, the court shall discharge such person and dismiss the proceedings against the person.

For the purpose of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or ~~90-113.21~~90-113.22 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation pursuant to this subsection and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section.~~G.S. 15A-145.3. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the ~~course,~~course as provided in G.S. 90-96.01(b), or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke ~~probation and/or~~probation, shall not discharge such person, shall not dismiss the proceedings against the person, and shall deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section.~~G.S. 15A-145.3. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(a).~~may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:~~

~~(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;~~

~~(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;~~

~~(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.~~

~~If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.~~

~~The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Commission, the names of all persons convicted under such Articles, together with the offense or offenses of which such persons were convicted. The clerk shall also file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Court shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 or 5A has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article ~~by possessing a controlled substance included within Schedules II through VI of this Article, or by~~ or possessing drug paraphernalia as prohibited by ~~G.S. 90-113.21~~G.S. 90-113.22 upon dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(b).~~such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment, or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment, or information, or trial in response to any inquiry made of him for any purpose.~~

(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of ~~this Article~~Article 5 of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of a misdemeanor under this ~~Article by possessing a controlled substance included within Schedules II through VI of this~~ Article, the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.3(c).~~the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records~~

~~of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.~~

~~The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.~~

~~The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article.~~"

SECTION 8. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement under this section, G.S. 15A-145, ~~or G.S. 90-96,~~G.S. 15A-145.1, G.S. 15A-145.2, or G.S. 15A-145.3, and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

SECTION 9. G.S. 15A-146(a1) reads as rewritten:

"(a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple offenses and all the charges are dismissed, or findings of not guilty or not responsible are made, then a person may apply to have each of those charges expunged if the offenses occurred within the same 12-month period of time or if the charges are dismissed or findings are made at the same term of court. Unless circumstances otherwise clearly provide, the phrase "term of court" shall mean one week for superior court and one day for district court. There is no requirement that the multiple offenses arise out of the same transaction or occurrence or that the multiple offenses were consolidated for judgment. The court shall hold a hearing on the application. If the court finds that the person had not previously received an expungement under this subsection, that the person had not previously received an expungement under ~~G.S. 15A-145 or G.S. 90-96,~~G.S. 15A-145, G.S. 15A-145.1, G.S. 15A-145.2, or G.S. 15A-145.3, and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

SECTION 10. This act becomes effective December 1, 2009, and applies to petitions for expunctions filed on or after that date.

HOUSE BILL 1329:
Consolidate Expunction Statutes

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 17, 2009
Introduced by:	Reps. Bryant, Bordsen, Adams, Moore	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to Third Edition H1329-CSSA-52		

SUMMARY: ***The Proposed Committee Substitute for House Bill 1329 consolidates all statutes related to expunction of records in one Article of the General Statutes.***

The proposed committee substitute makes technical corrections and corrections to various statutes to clarify the expunction process.

BILL ANALYSIS: House Bill 1329 relocates the current expunction provisions in various locations of the General Statutes into Article 5 of Chapter 15A as follows:

- G.S. 14-50.30 and portions of G.S. 14-50.29(d) are relocated to G.S. 15A-145.1
- G.S. 90-96(b), (d), (e), and (f) are relocated to G.S. 15A-145.2
- G.S. 90-113.14(b), (d), and (e) are relocated to G.S. 15A-145.3

The bill adds language to the previous locations of the provisions indicating the new location of the provisions relating to expunction.

Additionally, the proposed committee substitute makes changes to several statutes to clarify the application of the expunction provisions as follows:

- Changes references to G.S. 90-113.21 in several statutes to G.S. 90-113.22. The current statutes refer to "possessing drug paraphernalia as prohibited by G.S. 90-113.21"; however G.S. 90-113.21 only defines drug paraphernalia. The criminal offense for possessing drug paraphernalia is in G.S. 90-113.22.
- Makes clarifying changes in G.S. 90-96(a1) and G.S. 90-113.14(a1). These subsections presume that discharge and dismissal, and ultimately expunction follow after completion of the requirements of the subsection. However, the current language does not expressly provide for either the discharge and dismissal or for the expunction. Language has been added to both subsections specifically providing for discharge and dismissal if the conditions are met, and prohibiting discharge and dismissal if the conditions are not met. G.S. 15A-145.2(a) and G.S. 15A-145.3(a) have been amended to authorize the expunction of the discharge and dismissal that may be granted under G.S. 90-96(a1) or G.S. 90-113.14(a1). Additionally, a reference to G.S. 90-96.01(b) related to failure to pay fees for a drug education program has been added to both subsections (a1) for clarity.
- Language in G.S. 90-113.14 (which is in The Toxic Vapors Act, Article 5A of Chapter 90) referred to "a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article". There are no such possession offenses in Article 5A; they are all in Article 5 (The Controlled Substances Act). The language regarding "possessing a controlled substance..." has been deleted, so that it now refers to "a misdemeanor under this Article" and will include violations of G.S. 90-113.10 (Inhaling fumes for purposes of causing intoxication), G.S. 90-113.10.A (Alcohol vaporizing devices

prohibited), G.S. 90-113.11 (Possession of substances), and G.S. 90-113.12 (Sale of substances).

- Sections 8 and 9 make conforming changes to G.S. 15A-146(a) and (a1) to include references to the new expunction statutes.

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to petitions for expunctions filed on or after that date.

From Rep Angela Bryant Attachment 8

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EXPUNCTION OF CRIMINAL RECORDS

This is a summary of North Carolina law concerning the expunction of criminal records. Expunction is the process by which a record of criminal conviction is removed by order of the court, and the individual is restored to the status he or she occupied before the arrest or indictment. The terms 'expunction' and 'expungement' are often used interchangeably, and both appear in the statutes. In very limited circumstances, North Carolina law permits the expunction of certain offenses from a person's criminal record. There are several requirements that must be met for expunction and each individual can generally be granted only one expungement in his or her lifetime. Any person seeking advice regarding a specific case should contact an attorney of his or her choice for more information.

Expunction When Charges Dismissed/Not Guilty

- ***Charges Dismissed Or Person Found Not Guilty*** - G.S. 15A-146 provides for the expunction of records when charges are dismissed or there is a finding of not guilty. A person charged with any crime, whether a misdemeanor or a felony, who is not convicted of that offense, can apply to have the charge expunged. *Persons who have previously received an expungement under this or other specified provisions, or persons who have previously been convicted of a felony would not qualify under this provision.*

- ***Charges Dismissed Or Person Found Not Guilty As A Result Of Identity Fraud*** - G.S. 15A-147 provides for the expunction of records when a charge is dismissed or there is a finding of not guilty in a case where a person is charged with a crime as a result of someone else using the person's identifying information to commit an infraction or crime. When the charge against the person is dismissed, a finding of not guilty is made, or the conviction is set aside, the person can apply to have the charge expunged. *There is no limit to the number of times a person who is the victim of identity fraud can qualify for an expungement under this provision.*

- ***Charges Dismissed Or Person Found Not Guilty Of Certain Drug-Related Offenses Committed While Under The Age Of 21*** - G.S. 90-96(d) provides for the expunction of records when a person is charged with misdemeanor possession of a controlled substance or possession of less than 1 gram of cocaine, and the charges are subsequently dismissed or there is a finding of not guilty. *An order of expunction must be entered if the court determines that the person was not over 21 at the time any of the proceedings occurred.* A similar provision is contained in G.S. 113.14(d) with regard to misdemeanor possession of controlled substances in violation of the Toxic Vapors Act and possession of drug paraphernalia.

Expunction When The Offender Was Under A Specified Age At The Time Of The Offense or Conviction

Juvenile Records - G.S. 7B-3200 provides for a person who has reached the age of 18 to petition for the expunction of records relating to the person's having been adjudicated delinquent or undisciplined while

a minor. *This provision does not allow the expunction of records relating to an offense that would have been a Class A-E felony if committed by an adult.* The statute also provides for expunction of juvenil records when a juvenile petition was dismissed without adjudication

- ***Convictions of Misdemeanor While Under The Age Of 18*** - G.S. 15A-145 provides for the expunction of records for first offenders under the age of 18 at the time of conviction of a misdemeanor. *A person who is convicted of a misdemeanor prior to reaching the age of 18 may have that conviction expunged after 2 years, assuming there have been no other convictions within that time period.*

- ***Misdemeanor Possession Of Alcohol While Under the Age of 21*** - G.S. 15A-145 also provides for the expunction of records for first offenders under the age of 21 at the time of conviction of misdemeanor possession of alcohol. *A person who is convicted of misdemeanor possession of alcohol while under the age of 21 may have that conviction expunged after 2 years, assuming there have been no other convictions in that time period.*

Expunction Of Convictions For Certain Drug-Related Offenses

- ***Conditional Discharge And Expunction For First Offenders*** - G.S. 90-96 and G.S. 90-113.14 provide for the conditional discharge and expunction of records for first offenders, and apply to persons who have not previously been convicted of any offense under North Carolina's Controlled Substances Act, Toxic Vapors Act, or Drug Paraphernalia Act, or under corresponding federal law or the laws of another state. When such person pleads guilty to or is found guilty of misdemeanor drug possession, possession of less than one gram of cocaine, possessing drug paraphernalia, or inhaling or possessing any substanc having the property of releasing toxic vapors or fumes, the court may, without entering a judgment o guilt and with the consent of such person, defer further proceedings and place the offender on probation. The probation, if imposed, must be for a period of at least one year and require, absent extenuating circumstances, that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of probation, the program of instruction at the drug education school approved by the Department of Health and Human Services. Upon fulfillment of the terms and conditions of probation, the person is discharged and the proceedings against him are dismissed. Discharge and dismissal under G.S. 90-96 and G.S. 90-113.14 may occur only once with respect to any person. Both G.S. 90-96(e) and 90-113.14(e) provide that, upon the discharge and dismissal of the proceedings, an offender who was not over 21 years of age at the time of the offense may apply to the court for an order of expunction. The court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records.

Gang Offenses (G.S.14-50.29-30)

Deferred Prosecution/Expunction: The act provides for the deferred prosecution of defendants with no prior convictions who were under the age of 18 at the time of the offense. Deferred prosecution means that the defendant may be placed on supervised probation for not less than one year, and upon fulfillment of the terms and condition of probation, the court may discharge the defendant and dismiss the proceedings against the defendant. Discharge and dismissal may occur only once with respect to any person. Upon discharge and dismissal, the person may apply for an order of expungement. A person who is convicted of an offense under the Street Gang Suppression Act also may apply for order of expungement, provided the person has not been previously convicted of any criminal offense, and the person was under the age of 18 at the time of conviction.

This act becomes effective December 1, 2008, and applies to offenses committed on or after that date. (BC)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 726
Committee Substitute Favorable 5/13/09

Short Title: Clarify Expunctions. (Public)

Sponsors:

Referred to:

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON'S RECORD MAY BE EXPUNGED FOR A FIRST MISDEMEANOR OFFENSE COMMITTED WHEN THE PERSON WAS LESS THAN EIGHTEEN YEARS OLD EVEN THOUGH THE PERSON IS EIGHTEEN YEARS OLD OR OLDER AT THE TIME OF CONVICTION; TO PROVIDE THAT A PERSON'S RECORD MAY BE EXPUNGED FOR A FIRST MISDEMEANOR POSSESSION OF ALCOHOL OFFENSE COMMITTED WHEN THE PERSON WAS LESS THAN TWENTY-ONE YEARS OLD EVEN THOUGH THE PERSON IS TWENTY-ONE YEARS OR OLDER AT THE TIME OF THE CONVICTION; TO REQUIRE STATE AND NATIONAL CRIMINAL RECORD CHECKS WHEN EXPUNGING RECORDS; AND TO PROVIDE THAT ANY PERSON OR ENTITY REQUIRED TO OBTAIN A CRIMINAL RECORD CHECK WOULD NOT BE DEEMED TO HAVE KNOWLEDGE OF OFFENSES EXPUNGED UNDER THE STATUTE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-145 reads as rewritten:

"**§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of ~~conviction~~ commission of misdemeanor; expunction of certain other misdemeanors.**

(a) Whenever any person who ~~has (i) not yet attained the age of 18 years~~ (i) committed a misdemeanor when the person was less than 18 years old and who has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) ~~not yet attained the age of 21 years~~ committed a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1) when the person was less than 21 years old and who has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), ~~he~~ the person may file a petition in the court where he or she was convicted for expunction of the misdemeanor from his or her criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that ~~he~~ the petitioner has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or

misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which ~~he~~ the petitioner lives and that his or her character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

~~(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two year period following that conviction.~~

(4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him or her are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against ~~him,~~him or her, and (i) petitioner was not 18 years old at the time of the ~~conviction~~ commission of the misdemeanor in question, or (ii) petitioner was not 21 years old at the time of the ~~conviction~~ commission of the offense of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he or she occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him or her for any purpose.

(c) The court shall also order that the said misdemeanor conviction, or a civil revocation of a drivers license as the result of a criminal charge, be expunged from the records of the court, and direct all law-enforcement agencies, including the Division of Motor Vehicles, bearing record of the same to expunge their records of the conviction or a civil revocation of a drivers license as the result of a criminal charge. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2.

The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(c1) Any other applicable State or local government agency shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in ~~his~~ the clerk's county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred twenty-five dollars ($125.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent.

(f) Notwithstanding any other provision of law, no person or entity required under State or federal law to obtain a criminal record check prior to employment shall be deemed to have knowledge of any offense expunged pursuant to this section."

SECTION 2. This act becomes effective December 1, 2009, and applies to petitions for expunctions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 1267
Second Edition Engrossed 5/13/09

Short Title:	Amend Liability of Social Networking Sites.	(Public)
Sponsors:	Representatives Blue; and Lucas.	
Referred to:	Science and Technology, if favorable, Judiciary II.	

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING LIABILITY OF A COMMERCIAL SOCIAL NETWORKING SITE TO PROVIDE THAT THE WEB SITE SHALL NOT BE HELD CIVILLY LIABLE FOR DAMAGES ARISING OUT OF COMMUNICATIONS ON THE WEB SITE IF THE WEB SITE MAKES A GOOD FAITH ATTEMPT TO SCREEN OUT USERS WHO ARE IN THE STATEWIDE SEX OFFENDER REGISTRY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-202.5A reads as rewritten:

"**§ 14-202.5A. Liability of commercial social networking sites.**

(a) ~~Notwithstanding the provisions of G.S. 14-208.15A(f), a commercial social networking site, as defined in G.S. 14-202.5, may be held civilly liable for damages for failing to make reasonable efforts to prevent a sex offender who is registered in accordance with Article 27A of Chapter 14 of the General Statutes to access its Web site.~~A commercial social networking site, as defined in G.S. 14-202.5, that complies with G.S. 14-208.15A or makes other reasonable efforts to prevent a sex offender who is registered in accordance with Article 27A of Chapter 14 of the General Statutes from accessing its Web site shall not be held civilly liable for damages arising out of a person's communications on the social networking site's system or network regardless of that person's status as a registered sex offender in North Carolina or any other jurisdiction.

(b) For the purposes of this section, "access" is defined as allowing the sex offender to do any of the activities or actions described in G.S. 14-202.5(b)(2) through G.S. 14-202.5(b)(4) by utilizing the Web site."

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

Attachment 11

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1267

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

H1267-AST-64 [v.1]

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

Date _____,2009

Senator Blue

moves to amend the bill on page 1, lines 22-23 by inserting the following between those lines:

"**SECTION 2.** G.S. 14-208.15A(d) reads as rewritten:

"(d) The Division shall develop ~~criteria and adopt rules~~ standards regarding the release and use of online identifier information. The ~~criteria~~ standards shall include a requirement that the information obtained from the statewide registry shall not be disclosed for any purpose other than for prescreening its users or comparing the database of registered users of the entity against the list of online identifiers of persons in the statewide registry.";

and renumber the remaining section accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 1267:
Amend Liability of Social Networking Sites

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 21, 2009
Introduced by:	Rep. Blue	**Prepared by:**	R. Erika Churchill*
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 1267 would rewrite G.S. 14-202.5A concerning the civil liability of a commercial social networking site with regard to the use of its services by a sex offender.

CURRENT LAW: In 2008, the General Assembly enacted legislation that requires registered sex offenders to provide information concerning any online identifier that the person uses or intends to use, such as an e-mail address, instant message screen name, user ID, chat or other Internet communication name. The 2008 legislation also prohibits the use of commercial social networking Web sites by sex offenders. **G.S. 14-202.5(b)** defines a "commercial social networking Web site" as an Internet Web site that meets the following requirements:

- Is operated by a person who derives revenue membership fees, advertising, or other sources related to the operation of the Web site.
- Facilitates social introduction between two or more persons for the purposes of friendship, meeting other persons, or information exchanges.
- Allows users to create Web pages or personal profiles that contain personal information
- Provides mechanisms for Web site users or visitors to communicate with other users

G.S. 14-208.15A authorizes the Division of Criminal Statistics to release information regarding a sex offender's online identifier to an entity for the purpose of allowing the entity to prescreen users or to compare the online identifier information with information held by the entity. An entity that receives a complaint that a person is using its services to (i) solicit a minor by computer to commit an unlawful sex act, or (ii) post or transmit material that contains a visual representation of a minor engaged in sexual activity, is required to report that information and the person's online identifier to the Cyber Tip Line at the National Center for Missing and Exploited Children, which will then forward that information to the appropriate law enforcement agency. An entity that complies with the law is immune from civil or criminal liability for refusing to provide service to a person believed to be a registered sex offender, or for a person's unlawful acts against a minor with whom the person had communicated on the entity's system; however, under **G.S. 14-202.5A**, a commercial social networking site may be held civilly liable for damages for failing to make reasonable efforts to prevent a registered sex offender from utilizing its Web site.

BILL ANALYSIS: House Bill 1267 would rewrite G.S. 14-202.5A concerning the civil liability of a commercial social networking site with regard to the use of its services by a sex offender. The bill would provide that a commercial social networking site would not be held civilly liable for damages arising out of a person's communications on its system or network, whether or not that person is a registered sex offender, if that commercial social networking site:

- Complies with G.S. 14-208.15A (voluntarily prescreening users and/or comparing its database of users to the list of sex offender's online identifiers, mandatory reporting of violations); or
- Makes other reasonable efforts to prevent a registered sex offender from using its service.

EFFECTIVE DATE: May 1, 2009.

BACKGROUND: Article 27A of Chapter 14 of the General Statutes (Sex Offender and Public Protection Registration Programs) requires persons who are convicted of sex offenses or of certain other offenses committed against minors to register with law enforcement agencies and to provide information such as the registrant's full name, physical description, fingerprints, photograph, all aliases, date of birth, drivers license number and home address. The initial registration generally occurs when a person is convicted and placed on probation or when an incarcerated person is released from prison. The SBI's Criminal Information and Identification Section is designated as the custodian of the statewide sex offender registry. Certain information about convicted sex offenders is made available to the public, including information about the identity of sex offenders, where they currently reside, and the offenses they committed. Free public access to automated data from the statewide sex offender registry is available via the Internet, including a photograph provided by the registering sheriff. The public can access the statewide registry to view individual registration records, segments of the statewide registry, or all of the statewide registry. Copies of registry information are available to the public upon written request and a reasonable fee may be charged for duplicating and mailing costs. The Internet address for the statewide registry is: http://sexoffender.ncdoj.gov/

H1267-SMST-54(e2) v1

** Brenda Carter substantially contributed to this summary.*

SENATE JUDICIARY I COMMITTEE
(Civil)

June 25, 2009
10:00 a.m. – Room 1027

MINUTES

The Senate judiciary I Committee met Thursday, June 25, 2009, in Room 1027 of the Legislative Building. Senators present were Committee Chairman Senator Martin L. Nesbitt, Vice-Chairmen Senators Dan Clodfelter, Pete Brunstetter, R.C. Soles, and Josh Stein, members, Senators Phil Berger, Dan Blue, Andrew Brock, Debbie Clary, David Hoyle, Ellie Kinnaird, Floyd McKissick, David Rouzer and Jerry Tillman, Staff Counsel, Erika Churchill, Giles Perry, Susan Sitze, and Bill Patterson, Committee Assistant Jan Lee.

Chairman Nesbitt called the meeting to order and recognized the pages serving the committee meeting today.

Senator Nesbitt recognized Representative Parmon to explain Committee Substitute for H.B. 1464 – Clarify DV Laws/Arrest/Valid Protective Order. A Proposed Committee Substitute for H.B. 1464 was distributed to the committee members and Senator Hoyle moved for adoption for discussion. After discussion, Senator Hoyle moved for a favorable report for the PCS for H.B. 1464 and unfavorable to bill presented and it passed. Senator Blue will handle the bill on the Senate Floor.

Senator Nesbitt recognized Senator Clodfelter to explain H.B. 937 – Innocence Commission/Limited Witness Immunity. Senator Clodfelter recognized former Chief Justice Lake to speak on the bill. Senator Clodfelter sent forth an amendment and moved that it be adopted. The motion passed. After discussion Senator McKissick moved that the amendment be rolled into a new PCS and given a favorable report and unfavorable to the original bill. The motion passed.

Senator Clodfelter was asked to chair the meeting and recognized Susan Sitze, Staff Counsel to explain Committee Substitute #2 for H.B. 1329 – Consolidate Expunction Statutes. Susan gave an analysis of the bill and Senator Berger moved to give the PCS as favorable report. Senator Soles moved to amend the bill and it was displaced.

Senator Clodfelter recognized Representative Sutton to speak on Committee Substitute for H.B. 1185 – Habitual DWI-Reinstatement Petition/10 Years. Staff Council Susan Sitze assisted with the explanation of the bill. During discussion of the bill Senator Brunstetter suggested changing the language for clarity and staff was directed to do so. Senator Brunstetter moved to adopt the amendment for consideration and the motion passed. Senator Tillman moved to roll the amendment into the bill and give the new PCS for H.B. 1185 a favorable report and unfavorable to the old PCS. The motion passed. Senator Blue will handle the bill on the floor of the Senate.

Senator Clodfelter recognized Representative Glazier to explain Committee Substitute for H.B. 192 – Child Witness Testimony/Procedures. A Proposed Committee Substitute was distributed and adopted for consideration. Senator McKissick moved for a favorable report for the PCS and unfavorable as to the original bill and the motion passed. Senator Clodfelter will handle the bill on the floor of the Senate.

Senator Clodfelter recognized Representative Bryant to explain CS #2 for H.B. 1329. Senator Soles moved to amend the bill and the motion passed. Andy with the Retail Merchants Association wanted to see the bill amended. Senator Clodfelter wanted to fix the bill while in Judiciary. Senator Soles offered a perfecting amendment to address the Retail Merchant's objections and the motion passed. Senator Blue moved to roll the amendment into the new PCS and give it a favorable report and unfavorable to original bill. The motion passed. Senator McKissick will handle the bill on the Senate Floor.

Senator Blue was recognized to explain H.B. 1269. He moved to make a technical amendment and moved for its adoption. The motion passed. Senator Blue presented an overview of H.B. 1269. Senator Tillman was concerned about the effective date and moved to amend. The motion passed. Senator Blue moved to amend the bill and the motion passed. Senator McKissick moved to roll the amendments into a new PCS and give it a favorable report and unfavorable to original bill and the motion passed.

The meeting was adjourned.

Copies of C.S. for H.B. 1464, PSCS HB1464, Bill Analysis for H.B. 1464, HB. 937,PSCS for HB 937, Bill Analysis for PCS H.B. 937, Amendment for HB 937, Letter from Heath Jenkins, NC Innocence Inquiry Case Statistics, CS HB 1185, Bill Analysis for H.B. 1185, Amendment for H.B. 1185, CS H.B. 192, Bill Analysis for H.B. 192, CS #2H.B. 1329, PSCS for H.B. 1329, Bill Analysis for PCS for H.B. 1329, Amendment for H.B. 1329, CS H.B. 1269, Bill Analysis for H.B. 1269, Amendment #1 for H.B. 1269, Amendment #2 for H.B. 1269, Amendment #3 for H.B. 1269 are attached to these minutes as Attachments 1,2,3,4,5,6,7,8,9,1,0,11,12,13,14,15,16,17,18,19,20 respectively.

Respectfully Submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W. Lee

Janette W. Lee
Committee Assistant

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Pete Brunstetter, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman
Senator Josh Stein, Vice Chairman

Thursday, June 25, 2009, 10:00 AM
1027 LB

Welcome and Opening Remarks

Introduction of Pages

The following Bills will be considered:

	BILL NO.	SHORT TITLE	SPONSOR
	HB 192	Child Witness Testimony/Procedures	Representative Ross Representative Stam Representative Glazier
	HB 937	Innocence Commn./Limited Witness Immunity.	Representative Ross Representative Lucas Representative Stam Representative Glazier
	HB 1185	Habitual DWI-Reinstatement Petition/10 Yrs.	Representative Sutton
	HB 1269	AOC Omnibus Courts Act.	Senator Blue
	HB 1329	Consolidate Expunction Statutes.	Representative Bordsen Representative Adams Representative Bryant Representative Moore
	HB 1464	Clarify DV Laws/Arrest/Valid Protective Order.	Representative Parmon Representative Womble

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1464
Committee Substitute Favorable 5/7/09

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.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1464
Committee Substitute Favorable 5/7/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1464-CSSA-51 [v.1]

6/17/2009 2:33:24 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. G.S. 50B-4.1(b) reads as rewritten:

"(b) A law enforcement officer shall arrest and take a person into ~~custody~~ custody, with or without a warrant or other ~~process~~ 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)."

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

HOUSE BILL 1464:
Clarify DV Laws/Arrest/Valid Protective Order

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 17, 2009
Introduced by:	Reps. Parmon, Womble	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to Second Edition H1464-CSSA-51		

SUMMARY: ***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:

Section 1 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.

Section 2 amends the existing language in G.S. 50B-4.1(b) to clarify that the arrest may occur with or without a warrant.

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

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.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 937
PROPOSED SENATE COMMITTEE SUBSTITUTE H937-CSSA-50 [v.1]

6/15/2009 5:38:18 PM

Short Title: Innocence Commn./Limited Witness Immunity. (Public)

Sponsors:

Referred to:

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. However, the Commission chair shall not order the witness to testify or produce other information that would incriminate the witness in the prosecution of any offense other than an offense for which the witness is granted immunity under this subsection. 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:	Senate Judiciary I	**Date:**	June 15, 2009
Introduced by:	Reps. Glazier, Ross, Stam, Lucas	**Prepared by:**	Susan Sitze*
Analysis of:	PCS to First Edition H937-CSSA-50		Committee Counsel

SUMMARY: ***The PCS for 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 at the innocence of the defendant has been proven by clear and convincing evidence for the charges to be smissed. 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: The PCS for 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 PCS adds a provision that the Commission chair shall not order the witness to testify or produce other information that would incriminate the witness in the prosecution of any offense other than an offense for which the witness is granted immunity under this subsection.

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 nrelated to the Commission's inquiry, false statements made under oath during the proceedings under the mmission, or prosecution for other crimes.

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

*This summary was substantially contributed to by Drupti Chauhan and Tim Hovis, Staff Attorneys

H937-SMSA-99(CSSA-50) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 937

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

H937-ASA-24 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
H937-CSSA-50[v.1]

Date 6/23 ,2009

Senator Clodfelter

moves to amend the bill on page 1, line 17
by rewriting that line to read:
"made under oath by the witness in prior proceedings. The prosecutor has a right to be heard by the Commission chair prior to the chair issuing the order. Once granted, the immunity shall apply"

SIGNED Daniel G Clodfelter
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment 8

Heath Jenkins
Chief of Police

Office: 704-263-4778
Fax: 704-263-1757

Stanley Police Department
P.O. Box 279 ~ Stanley, NC 28164

June 22, 2009

Chairman Martin L. Nesbitt
Senate Judiciary I Committee
North Carolina General Assembly
North Carolina Senate
300 North Salisbury Street-Room 300B
Raleigh, North Carolina 27603-5925

Dear Senate Judicial 1 Subcommittee:

Thank you for giving me the opportunity to address you. I am the Police Chief of Stanley, North Carolina and I was appointed by the Chief Justice to serve on the North Carolina Innocence Inquiry Commission. I have been honored by this service and I am confident in the quality of review the Commission gives to each post-conviction innocence claim.

The Commission serves as a gatekeeper and evaluates the credibility and reliability of new evidence of innocence. In order to best serve this function, the Commission must have access to all of the evidence in a case. If a witness refuses to testify, the Commission will not be able to accurately judge the entirety of the case.

As a member of the Commission and a Chief of Police, I support this bill. I also support giving the prosecutor a right to be heard when our Chairman decides whether to compel the testimony. Thank you for creating this extraordinary Commission. I am proud to serve on the Commission and grateful for this opportunity to address you.

Sincerely,

Heath R. Jenkins

North Carolina Innocence Inquiry Commission

Case Statistics

Compiled May, 2009

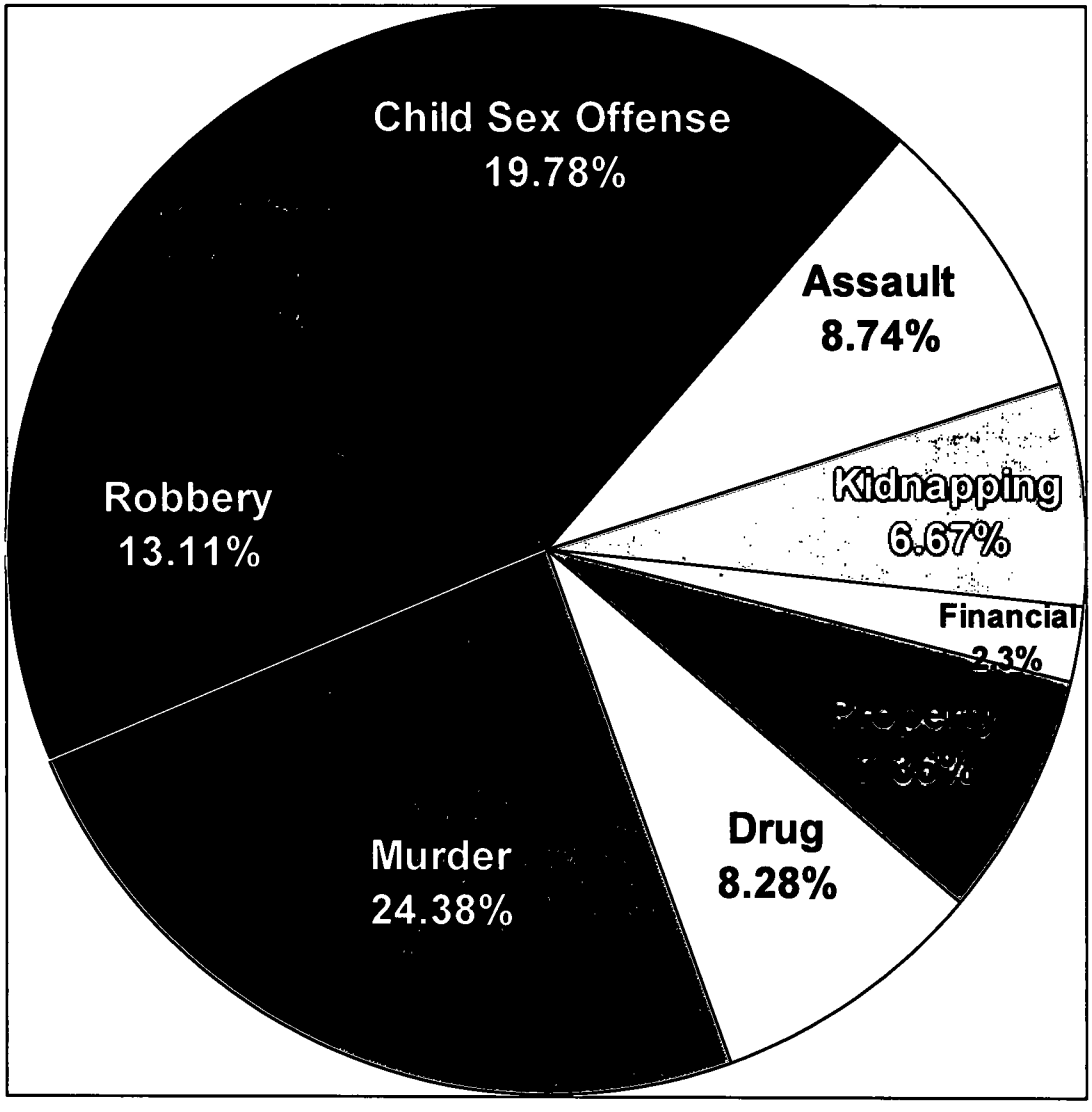
Number of General Information Requests	37
Number of Cases Currently in Review	69
Number of Cases Rejected	375
Number of Cases Currently in Investigation	9
Number of Cases Currently in Formal Inquiry	4
Number of Cases sent through Hearing	2 (both cases are now closed)
Total Number of Cases	496

Review is a preliminary look at a case and not a detailed investigation. It generally entails pulling court opinions, records, creating timelines, etc.

Investigation involves a staff member interviewing witnesses and conducting field work.

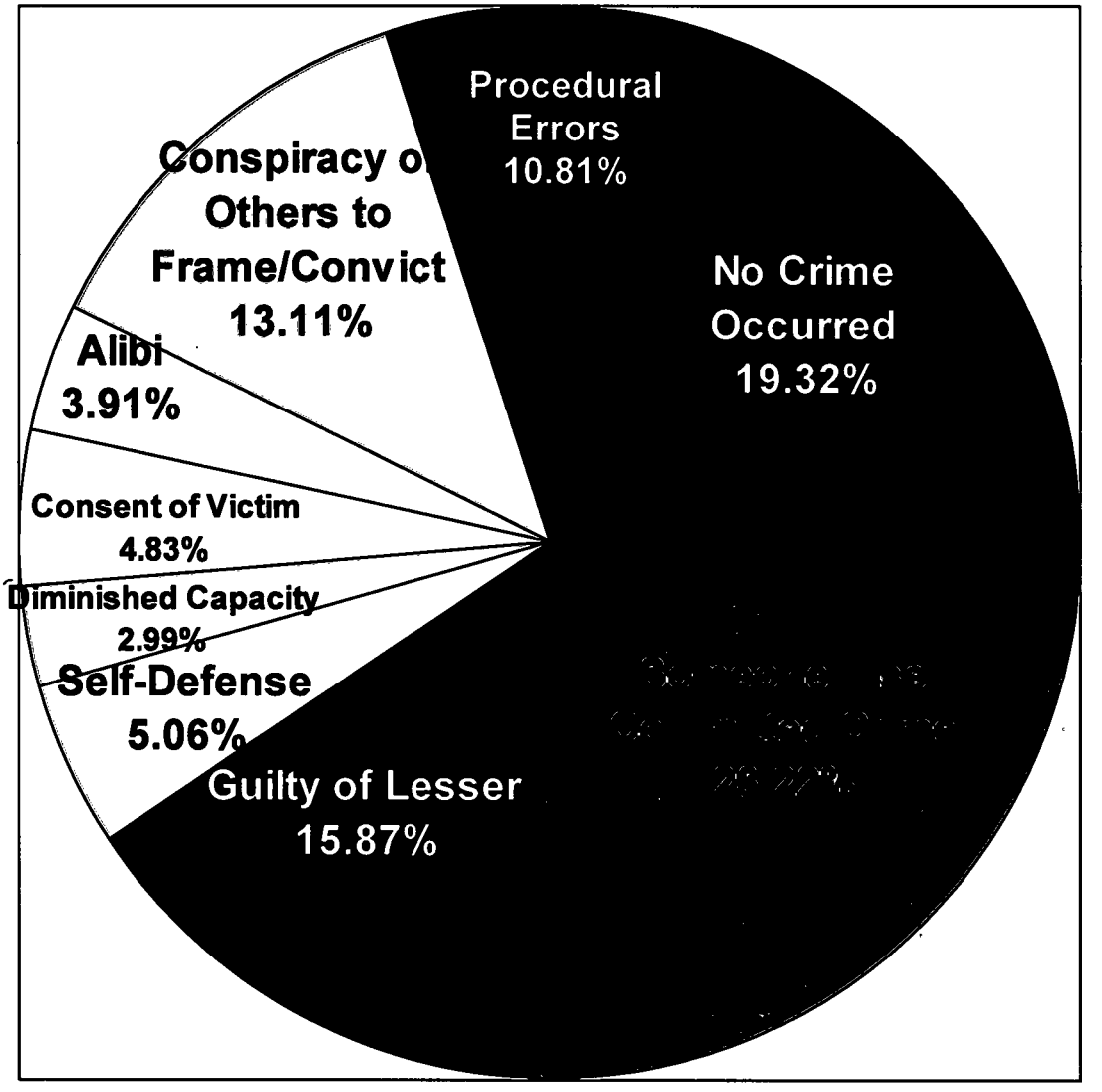
Formal Inquiry is defined by N.C.G.S. § 15A-1467. It requires the convicted person to waive his or her procedural safeguards and privileges.

Applicant's Convictions



- **Some applicants were convicted of multiple offenses**
- **Data not available in all cases. Data pulled from 438 cases total.**

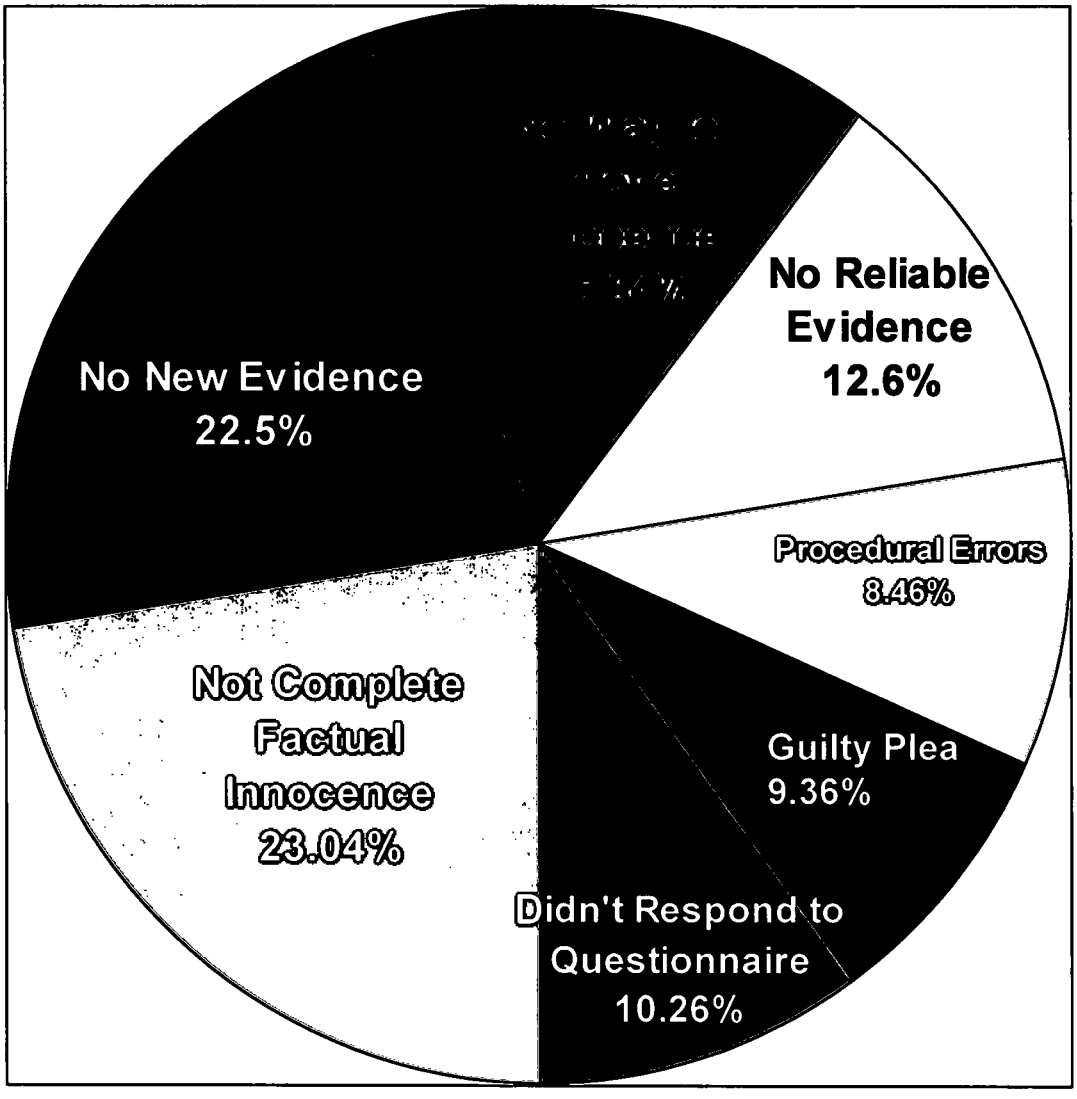
Innocence Claims



- **Some applicants made multiple innocence claims**
- **Data not available in all cases. Data pulled from 444 cases**

It is important to note that several of these categories do not fit the statutory requirement for actual innocence and result in an automatic rejection. A claim that a convicted person is guilty of a lesser offense, acted in self-defense, or acted with a diminished capacity is not a claim of actual innocence and will be rejected.

Reasons for Rejection



- **Some cases were rejected for multiple reasons**
- **Data pulled from all 496 rejected cases**

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 1185
Committee Substitute Favorable 5/7/09
Third Edition Engrossed 5/14/09

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 10 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 10 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 a user of alcohol, drugs, or unlawfully using any controlled substance, or an excessive user of prescription drugs."

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.

HOUSE BILL 1185:
Habitual DWI-Reinstatement Petition/10 Yrs

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 22, 2009
Introduced by:	Rep. Sutton	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	Third Edition		

SUMMARY: 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 a user of alcohol, drugs, or unlawfully using any controlled substance, or an excessive user of prescription drugs.

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.

H1185-SMSA-106(e3) v1

Attachment 12

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. ~~1888~~ H1185 DATE 6-25-09

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

COMMITTEE SUBSTITUTE _____

Rep.) Brunstetter
Sen.)

1 moves to amend the bill on page 2, line 47
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "drugs or"
4
5
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 192
Corrected Copy 2/19/09
Committee Substitute Favorable 3/2/09

Short Title: Child Witness Testimony/Procedures. (Public)

Sponsors:

Referred to:

February 18, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH PROCEDURAL REQUIREMENTS FOR CHILD WITNESS TESTIMONY IN CRIMINAL CASES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 73 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1225A. Child witnesses; remote testimony.**

(a) Definitions.

(1) Child. – For the purposes of this section, a minor who is under the age of 16 years old at the time of the testimony.

(2) Criminal proceeding. – Any hearing or trial in a prosecution of a person charged with violating a criminal law of this State, and any hearing or proceeding conducted under Subchapter II of Chapter 7B of the General Statutes where a juvenile is alleged to have committed an offense that would be a criminal offense if committed by an adult.

(3) Remote testimony. – A method by which a child witness testifies in a criminal proceeding outside of the physical presence of the defendant.

(b) Remote Testimony Authorized. – In a criminal proceeding, a child witness who has been found competent to testify may testify, under oath or affirmation, other than in an open forum when the court determines:

(1) That the child witness would suffer serious emotional distress, not by the open forum in general, but by testifying in the defendant's presence, and

(2) That the child's ability to communicate with the trier of fact would be impaired.

(c) Hearing Procedure. – Upon motion of a party or the court's own motion, and for good cause shown, the court shall hold an evidentiary hearing to determine whether to allow remote testimony. Hearings in the superior court division, and hearings conducted under Subchapter II of Chapter 7B of the General Statutes, shall be recorded. The presence of the child witness is not required at the hearing unless ordered by the presiding judge.

(d) Order. – An order allowing or disallowing the use of remote testimony shall state the findings of fact and conclusions of law that support the court's determination. An order allowing the use of remote testimony shall do the following:

(1) State the method by which the child is to testify.

(2) List any individual or category of individuals allowed to be in, or required to be excluded from, the presence of the child during the testimony.

(3) State any special conditions necessary to facilitate the cross-examination of the child.

(4) State any condition or limitation upon the participation of individuals in the child's presence during his or her testimony.

(5) State any other condition necessary for taking or presenting the testimony.

(e) Testimony. – The method used for remote testimony shall allow the judge, jury, and defendant or juvenile respondent to observe the demeanor of the child as the child testifies in a similar manner as if the child were in the open forum. The court shall ensure that the defense counsel is physically present where the child testifies, has a full and fair opportunity for cross-examination of the child witness, and has the ability to communicate privately with the defendant or juvenile respondent during the remote testimony. Nothing in this section shall be construed to limit the provisions of G.S. 15A-1225.

(f) Nonexclusive Procedure and Standard. – Nothing in this section shall:

(1) Prohibit the use or application of any other method or procedure authorized or required by statute, common law, or rule for the introduction into evidence of the statements or testimony of a child in a criminal or noncriminal proceeding.

(2) Be construed to require a court, in noncriminal proceedings, to apply the standard set forth in subsection (b) of this section, or to deviate from a standard or standards authorized by statute, common law, or rule, for allowing the use of remote testimony in noncriminal proceedings."

SECTION 2. This act becomes effective December 1, 2009, and applies to any hearings or trials held on or after that date. Nothing in this act shall be construed to (i) abrogate any judicial rulings or decisions prior to the effective date of this act that allowed or disallowed witness testimony in any criminal proceeding or (ii) abrogate any judicial rulings that prohibit a psychological evaluation of an unwilling witness.

HOUSE BILL 192:
Child Witness Testimony/Procedures

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 17, 2009
Introduced by:	Reps. Ross, Stam, Glazier	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	PCS to Third Edition H192-CSRK-74		Staff Attorney

SUMMARY: House Bill 192 authorizes the court to allow a minor witness to testify outside of the presence of the defendant in criminal proceedings, under certain circumstances. This act becomes effective December 1, 2009, and applies to criminal proceedings, as defined in the act, commencing on or after that date.

The PCS adds a new subsection (g) which provides that a pro se defendant may receive the assistance of counsel in order to allow for the remote testimony.

CURRENT LAW: In *Maryland v. Craig*, a 1990 case, the United State Supreme Court held that it did not violate a defendant's Sixth Amendment right to confront witnesses where a child witness testified outside of the defendant's presence, as long as certain procedural requirements were met. North Carolina courts have held that, with appropriate safeguards, the procedure did not violate a defendant's rights under the federal or State Constitutions.

Because non-criminal proceedings, including child custody cases, do not involve the same constitutional issues, the common law standards for a judge to utilize the procedures are not as rigorous. Generally, the courts, in non-criminal proceedings, have used the standard of what is in the "best interests" of the child witness in making a decision whether to allow for testimony outside the presence of either party.

BILL ANALYSIS: House Bill 192 would codify the North Carolina common law on testimony by a minor witness outside the presence of a defendant, or a juvenile who is alleged to have committed an offense that would be a criminal offense if committed by an adult.

Section 1: This section creates a new section in the Criminal Procedure Act authorizing remote testimony by child witnesses.

Subsection (a): Provides the following definitions:

- "Child" is a minor under the age of 16.
- "Criminal proceeding" is any hearing or trial in the prosecution of a person who has been charged with a criminal offense. The term also includes proceedings under Subchapter II of Chapter 7B which provides the procedures for delinquency proceedings and potential commitment to the Department of Juvenile Justice and Deliquency Prevention of a juvenile who commits a criminal offense.
- "Remote testimony" is defined as a minor witness testifying outside of the defendant's (juvenile's) presence.

Subsection (b): Authorized remote testimony if the court determines that:

- The minor would suffer serious emotional distress if he or she had to testify in front of the defendant—not just because of the courtroom atmosphere; and
- As a result of the distress, the minor would have difficulty communicating with the finder of fact.

Subsection (c): Requires the court to hold a hearing, and consider evidence as to whether remote testimony should be authorized. Generally, misdemeanors are heard in District Court and there is no verbatim record made by a court reporter. Defendants have the right to a new trial in Superior Court if dissatisfied with the District Court decision. The act clarifies that the minor is not required at the hearing.

Subsection (d): In ruling on whether to allow remote testimony, the court must state findings of fact and conclusions of law. An order allowing remote testimony must include:

- The specific method by which the minor is to testify.
- List of individuals or category of individuals allowed or excluded from the minor's presence.
- Special conditions to facilitate cross-examination.
- Conditions or limitations upon participation of individuals during the testimony.
- Any other necessary conditions.

Subsection (e): The following requirements must be satisfied during the minor's testimony:

- The judge, jury, and defendant (juvenile), must be able to view the minor's demeanor in a similar manner as if the minor was testifying from the witness stand in the courtroom.
- The defense counsel must be in the physical presence of the minor, and have a full and fair opportunity for cross-examination.
- The defense counsel must be able to communicate privately with the defendant (juvenile).
- The judge retains the ability, as currently set forth by statute, of (i) directing witnesses to remain outside the courtroom until they testify, and (ii) allow the parent or guardian of a minor to be present with the minor during his or her testimony, even if the parent or guardian will also be called to testify.

Subsection (f): This subsection clarifies that the new statute neither prohibits other lawful procedures for the testimony of a minor in criminal or non-criminal proceedings, nor requires the use of this procedure in a non-criminal proceeding. It also specifies that the required findings by a court for using remote testimony in a criminal case are not required for a non-criminal case, nor are they meant to overrule or change any of the current standards in those proceedings.

Subsection (g): Subsection (e) requires the defense counsel to be physically present; consequently, remote testimony would not be possible if the defendant was pro se. This subsection would authorize the court to appoint an attorney to assist a pro se defendant; the court-appointed counsel would be physically present and cross-examine the witness on behalf of the defendant.

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to criminal proceedings, as defined in the act, commencing on or after that date. The law does not

- Change or overrule any judicial rulings or decisions that either allowed or disallowed witness testimony.
- Affect the common law which provides that a party may not compel the psychological evaluation of an unwilling witness.

Hal Pell, counsel to House Judiciary I, substantially contributed to this summary.

H192-SMRO-126(CSRK-74) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 1329
Committee Substitute Favorable 4/29/09
Committee Substitute #2 Favorable 5/11/09

Short Title: Consolidate Expunction Statutes. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE ALL STATUTES RELATED TO EXPUNCTION OF RECORDS IN ONE ARTICLE OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.**

(a) Whenever any person who has not yet attained the age of 18 years and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.

(3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a

traffic violation under the laws of this State (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the offense in question or during the two-year period following that conviction, whichever applies.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

(b) If the court, after hearing, finds that the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner had not attained the age of 18 years at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment or information, or trial, or response to any inquiry made of the person for any purpose. The court shall also order that the said conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction as the result of a criminal charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief of police, or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(c) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina."

SECTION 2. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.**

(a) Whenever a person is discharged, and the proceedings against the person dismissed, pursuant to G.S. 90-96(a), and the person was not over 21 years of age at the time of the offense, the person may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-96(c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation following the decision to defer further proceedings on the offense in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him dismissed and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff, chief of police, or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing, that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(c) Whenever any person who has not previously been convicted of an offense under Article 5 of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or by possessing

drug paraphernalia as prohibited by G.S. 90-113.21 or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-96(c)) all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.21 or (ii) a felony under G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been canceled and expunged under the provisions of this subsection, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions

have been canceled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 of Chapter 90 of the General Statutes has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this subsection.

(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 3. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.**

(a) Whenever a person is discharged and the proceedings against the person dismissed under G.S. 90-113.14(a), such person, if he was not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-113.14(c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him dismissed and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the

order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff, chief of police, or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(b) Whenever any person is charged with a misdemeanor under Article 5A of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, upon dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(c) Whenever any person who has not previously been convicted of an offense under Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-113.14(c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered

shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this subsection, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article."

SECTION 4. G.S. 14-50.30 reads as rewritten:

"**§ 14-50.30. Expunction of records.**

~~(a) Whenever any~~ Any person who has not yet attained the age of 18 years and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state, may be eligible to apply for expunction of certain offenses under this Article pursuant to G.S. 15A-145.1.~~pleads guilty to or is guilty of (i) a Class H felony under this Article or (ii) an enhanced offense under G.S. 14-50.22, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:~~

~~(1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.~~

~~(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.~~

~~(3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.~~

~~(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the offense in question or during the two-year period following that conviction, whichever applies.~~

~~(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.~~

~~The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.~~

~~(b) If the court, after hearing, finds that the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner had not attained the age of 18 years at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose. The court shall also order that the said conviction be expunged from the records of the court, and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction as the result of a criminal charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.~~

~~(c) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.~~"

SECTION 5. G.S. 90-96 reads as rewritten:

"**§ 90-96. Conditional discharge ~~and expunction of records~~ for first offense.**

(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or is found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under

this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under this Article. Discharge and dismissal under this section or G.S. 90-113.14 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Controlled Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-95(a)(3) or G.S. 90-113.21 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Health and Human Services pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

(1) There is no drug education school within a reasonable distance of the defendant's residence; or

(2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subdivision (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

For the purposes of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or 90-113.21 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the course, or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke probation and/or deny application for expunction of all recordation of

defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the ~~dismissal~~ discharge of such person, and ~~discharge~~ dismissal of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(a).~~may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:~~

~~(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;~~

~~(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;~~

~~(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation following the decision to defer further proceedings on the offense in question.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.~~

~~If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.~~

~~The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the

Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to Judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article or a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(b).~~such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.~~

(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.2(c).~~the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.~~

~~The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to the petitioner's arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited in G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or~~

~~misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.~~

~~The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been canceled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been canceled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article.~~

~~(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent.~~"

SECTION 6. G.S. 90-113.14 reads as rewritten:

"**§ 90-113.14. Conditional discharge ~~and expunction of records~~ for first offenses.**

(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A or 5B of Chapter 90 pleads guilty to or is found guilty of inhaling or possessing any substance having the property of releasing toxic vapors or fumes in violation of Article 5A of Chapter 90, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent

convictions. Discharge and dismissal under this section or G.S. 90-96 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge or dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, the "North Carolina Controlled Substances Act", Article 5, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-113.10 or 90-113.11 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Health and Human Services pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

(1) There is no drug education school within a reasonable distance of the defendant's residence; or

(2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subsection (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

For the purpose of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or 90-113.21 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the course, or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke probation and/or deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(a).~~may apply to the court for an order to expunge from all official~~

~~records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:~~

~~(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;~~

~~(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;~~

~~(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.~~

~~If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.~~

~~The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Commission, the names of all persons convicted under such Articles, together with the offense or offenses of which such persons were convicted. The clerk shall also file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Court shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 or 5A has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21 upon dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(b).~~such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment, or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment, or information, or trial in response to any inquiry made of him for any purpose.~~

(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.3(c).~~the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.~~

~~The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge~~

~~makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.~~

~~The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article.~~"

SECTION 7. This act becomes effective December 1, 2009, and applies to petitions for expunctions filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1329
Committee Substitute Favorable 4/29/09
Committee Substitute #2 Favorable 5/11/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1329-CSSA-52 [v.4]

6/17/2009 9:16:38 PM

Short Title: Consolidate Expunction Statutes. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE ALL STATUTES RELATED TO EXPUNCTION OF RECORDS IN ONE ARTICLE OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.**

(a) Whenever any person who has not yet attained the age of 18 years and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, or has been discharged and had the proceedings against the person dismissed pursuant to G.S. 14-50.29, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.

(3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the offense in question or during the two-year period following that conviction, whichever applies.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

(b) If the court, after hearing, finds that (i) the petitioner was dismissed and the proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner had not attained the age of 18 years at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment or information, or trial, or response to any inquiry made of the person for any purpose. The court shall also order that the said conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction as the result of a criminal charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief of police, or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(c) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina."

SECTION 2. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.**

(a) Whenever a person is discharged, and the proceedings against the person dismissed, pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the offense, the person may apply to the court for an order to expunge from all official records

(other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-96(c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation following the decision to defer further proceedings on the offense in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him dismissed and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff, chief of police, or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing, that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge

such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(c) Whenever any person who has not previously been convicted of an offense under Article 5 of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-96(c)) all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting

agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been canceled and expunged under the provisions of this subsection, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been canceled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 of Chapter 90 of the General Statutes has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this subsection.

(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 3. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.**

(a) Whenever a person is discharged and the proceedings against the person dismissed under G.S. 90-113.14(a) or (a1), such person, if he was not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-113.14(c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him dismissed and that he was not over 21 years of age at the time of the offense, it

shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff, chief of police, or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(b) Whenever any person is charged with a misdemeanor under Article 5A of Chapter 90 of the General Statutes or possessing drug paraphernalia as prohibited by G.S. 90-113.22, upon dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(c) Whenever any person who has not previously been convicted of an offense under Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-113.14(c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by G.S. 90-113.22, that he was not over 21 years of age at the time of the offense, that he has been

of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this subsection, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5A of Chapter 90 of the General Statutes has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this subsection."

SECTION 4. G.S. 14-50.29(d) reads as rewritten:

"(d) Upon discharge and dismissal pursuant to this section, the person may apply for an order to expunge the complete record of the proceedings resulting in the dismissal and discharge, pursuant to the procedures and requirements set forth in ~~G.S. 14-50.30(a).~~G.S. 15A-145.1. ~~If the court determines, after hearing, that such person was dismissed and the proceedings against the person discharged and that the person had not yet attained 18 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information.~~"

SECTION 5. G.S. 14-50.30 reads as rewritten:

"**§ 14-50.30. Expunction of records.**

~~(a)~~ ~~Whenever any~~ Any person who has not yet attained the age of 18 years and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state, may be eligible to apply for expunction of certain offenses under this Article pursuant to G.S. 15A-145.1.~~pleads guilty to or is guilty of (i) a Class H felony under this Article or (ii) an enhanced offense under G.S. 14-50.22, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two~~

~~years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:~~

~~(1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.~~

~~(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.~~

~~(3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.~~

~~(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the offense in question or during the two-year period following that conviction, whichever applies.~~

~~(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.~~

~~The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.~~

~~(b) If the court, after hearing, finds that the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner had not attained the age of 18 years at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose. The court shall also order that the said conviction be expunged from the records of the court, and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction as the result of a criminal charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State~~

~~Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.~~

~~(c) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.~~"

SECTION 6. G.S. 90-96 reads as rewritten:

"**§ 90-96. Conditional discharge ~~and expunction of records~~ for first offense.**

(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or is found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article or by possessing drug paraphernalia as prohibited by ~~G.S. 90-113.21,~~G.S. 90-113.22, or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under this Article. Discharge and dismissal under this section or G.S. 90-113.14 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Controlled Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-95(a)(3) or ~~G.S. 90-113.21~~G.S. 90-113.22 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Health and Human Services pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

(1) There is no drug education school within a reasonable distance of the defendant's residence; or

(2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subdivision (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

Upon fulfillment of the terms and conditions of the probation, the court shall discharge such person and dismiss the proceedings against the person.

For the purposes of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or ~~90-113.21~~90-113.22 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation pursuant to this subsection and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section.~~G.S. 15A-145.2. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the ~~course,~~course as provided in G.S. 90-96.01(b), or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke ~~probation and/or~~ probation, shall not discharge such person, shall not dismiss the proceedings against the person, and shall deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section.~~G.S. 15A-145.2. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the ~~dismissal~~ discharge of such person, and ~~discharge~~ dismissal of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(a).~~may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:~~

~~(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;~~

~~(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;~~

~~(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation~~

~~following the decision to defer further proceedings on the offense in question.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.~~

~~If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.~~

~~The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to Judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article or a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(b).~~such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.~~

(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by ~~G.S. 90-113.21,~~G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.2(c).~~the court may, upon application of the~~

~~person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.~~

~~The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to the petitioner's arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited in G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.~~

~~The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been canceled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been canceled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article.~~

~~(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent.~~"

SECTION 7. G.S. 90-113.14 reads as rewritten:

"**§ 90-113.14. Conditional discharge ~~and expunction of records~~ for first offenses.**

(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A or 5B of Chapter 90 pleads guilty to or is found guilty of inhaling or possessing any substance having the property of releasing toxic vapors or fumes in violation of Article 5A of Chapter 90, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions. Discharge and dismissal under this section or G.S. 90-96 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge or dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, the "North Carolina Controlled Substances Act", Article 5, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-113.10 or 90-113.11 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Health and Human Services pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

(1) There is no drug education school within a reasonable distance of the defendant's residence; or

(2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subsection (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

Upon fulfillment of the terms and conditions of the probation, the court shall discharge such person and dismiss the proceedings against the person.

For the purpose of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or ~~90-113.21~~90-113.22 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation pursuant to this subsection and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section.~~G.S. 15A-145.3. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the ~~course,~~course as provided in G.S. 90-96.01(b), or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke ~~probation and/or~~probation, shall not discharge such person, shall not dismiss the proceedings against the person, and shall deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section.~~G.S. 15A-145.3. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(a).~~may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:~~

~~(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;~~

~~(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;~~

~~(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.~~

~~If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.~~

~~The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Commission, the names of all persons convicted under such Articles, together with the offense or offenses of which such persons were convicted. The clerk shall also file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Court shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 or 5A has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article ~~by possessing a controlled substance included within Schedules II through VI of this Article, or by~~ or possessing drug paraphernalia as prohibited by ~~G.S. 90-113.21~~G.S. 90-113.22 upon dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(b).~~such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment, or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment, or information, or trial in response to any inquiry made of him for any purpose.~~

(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of ~~this Article~~Article 5 of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of a misdemeanor under this ~~Article by possessing a controlled substance included within Schedules II through VI of this~~ Article, the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.3(c).~~the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records~~

~~of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.~~

~~The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.~~

~~The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article.~~"

SECTION 8. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement under this section, G.S. 15A-145, ~~or G.S. 90-96,~~G.S. 15A-145.1, G.S. 15A-145.2, or G.S. 15A-145.3, and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

SECTION 9. G.S. 15A-146(a1) reads as rewritten:

"(a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple offenses and all the charges are dismissed, or findings of not guilty or not responsible are made, then a person may apply to have each of those charges expunged if the offenses occurred within the same 12-month period of time or if the charges are dismissed or findings are made at the same term of court. Unless circumstances otherwise clearly provide, the phrase "term of court" shall mean one week for superior court and one day for district court. There is no requirement that the multiple offenses arise out of the same transaction or occurrence or that the multiple offenses were consolidated for judgment. The court shall hold a hearing on the application. If the court finds that the person had not previously received an expungement under this subsection, that the person had not previously received an expungement under ~~G.S. 15A-145 or G.S. 90-96,~~G.S. 15A-145, G.S. 15A-145.1, G.S. 15A-145.2, or G.S. 15A-145.3, and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

SECTION 10. This act becomes effective December 1, 2009, and applies to petitions for expunctions filed on or after that date.

~~of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.~~

~~The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.~~

~~The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article.~~"

SECTION 8. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement under this section, G.S. 15A-145, ~~or G.S. 90-96,~~G.S. 15A-145.1, G.S. 15A-145.2, or G.S. 15A-145.3, and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

SECTION 9. G.S. 15A-146(a1) reads as rewritten:

"(a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple offenses and all the charges are dismissed, or findings of not guilty or not responsible are made, then a person may apply to have each of those charges expunged if the offenses occurred within the same 12-month period of time or if the charges are dismissed or findings are made at the same term of court. Unless circumstances otherwise clearly provide, the phrase "term of court" shall mean one week for superior court and one day for district court. There is no requirement that the multiple offenses arise out of the same transaction or occurrence or that the multiple offenses were consolidated for judgment. The court shall hold a hearing on the application. If the court finds that the person had not previously received an expungement under this subsection, that the person had not previously received an expungement under ~~G.S. 15A-145 or G.S. 90-96,~~G.S. 15A-145, G.S. 15A-145.1, G.S. 15A-145.2, or G.S. 15A-145.3, and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

SECTION 10. This act becomes effective December 1, 2009, and applies to petitions for expunctions filed on or after that date.

HOUSE BILL 1329: Consolidate Expunction Statutes

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 24, 2009
Introduced by:	Reps. Bryant, Bordsen, Adams, Moore	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to Third Edition H1329-CSSA-57		

SUMMARY: ***The Proposed Committee Substitute for House Bill 1329 consolidates all statutes related to expunction of records in one Article of the General Statutes.***

The proposed committee substitute modifies the age requirements of certain expunction statutes to be the age at the time of the offense rather than the age at the time of conviction.

The proposed committee substitute makes technical corrections and corrections to various statutes to clarify the expunction process.

BILL ANALYSIS: House Bill 1329 relocates the current expunction provisions in various locations of the General Statutes into Article 5 of Chapter 15A as follows:

- G.S. 14-50.30 and portions of G.S. 14-50.29(d) are relocated to G.S. 15A-145.1
- G.S. 90-96(b), (d), (e), and (f) are relocated to G.S. 15A-145.2
- G.S. 90-113.14(b), (d), and (e) are relocated to G.S. 15A-145.3

The bill adds language to the previous locations of the provisions indicating the new location of the provisions relating to expunction.

The bill modifies several expunction statutes that currently allow expunction based on the person's age at the time of the conviction to instead be based on the person's age at the time of the offense is committed.

Additionally, the proposed committee substitute makes changes to several statutes to clarify the application of the expunction provisions as follows:

- Changes references to G.S. 90-113.21 in several statutes to G.S. 90-113.22. The current statutes refer to "possessing drug paraphernalia as prohibited by G.S. 90-113.21"; however G.S. 90-113.21 only defines drug paraphernalia. The criminal offense for possessing drug paraphernalia is in G.S. 90-113.22.
- Makes clarifying changes in G.S. 90-96(a1) and G.S. 90-113.14(a1). These subsections presume that discharge and dismissal, and ultimately expunction follow after completion of the requirements of the subsection. However, the current language does not expressly provide for either the discharge and dismissal or for the expunction. Language has been added to both subsections specifically providing for discharge and dismissal if the conditions are met, and prohibiting discharge and dismissal if the conditions are not met. G.S. 15A-145.2(a) and G.S. 15A-145.3(a) have been amended to authorize the expunction of the discharge and dismissal that may be granted under G.S. 90-96(a1) or G.S. 90-113.14(a1). Additionally, a reference to G.S. 90-96.01(b) related to failure to pay fees for a drug education program has been added to both subsections (a1) for clarity.
- Language in G.S. 90-113.14 (which is in The Toxic Vapors Act, Article 5A of Chapter 90) referred to "a misdemeanor under this Article by possessing a controlled substance included

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1329

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

H1329-AST-65 [v.1]

Comm. Sub. [YES]
Amends Title [YES]
Third Edition

Date _____ ,2009

Senator Soles

moves to amend the bill on page 1, line 6 by rewriting that line to read:

"CONVICTION, TO ALLOW THE EXPUNCTION OF MISDEMEANOR LARCENY, AND TO MAKE CLARIFYING AND CONFORMING CHANGES TO";

and on page 19, lines ~~40-41~~ 40-41 by inserting the following between those lines:

(b)

"Notwithstanding subsection (a) of this section and any other provision of law, a person may file a petition in the court where the person was convicted for expunction of a misdemeanor conviction from the person's criminal record if the person was convicted for misdemeanor larceny under G.S. 14-72(a) more than 10 years prior to the filing of the petition. using the procedure set forth in this section.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1269
Committee Substitute Favorable 5/5/09

Short Title: AOC Omnibus Courts Act. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE A COUNTY OR CITY TO USE EXCESS FACILITY FEES WITHOUT THE APPROVAL OF THE ADMINISTRATIVE OFFICE OF THE COURTS, TO ADD TO THE DIRECTOR'S POWERS AND DUTIES THE ESTABLISHMENT AND STAFFING OF AN INTERNAL AUDITING DIVISION FOR THE JUDICIAL DEPARTMENT, TO MODIFY CERTAIN STATUTES RELATED TO DRUG TREATMENT COURTS, AND TO CLARIFY THE EMERGENCY POWERS OF THE CHIEF JUSTICE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-304(a)(2) reads as rewritten:

"(2) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in the district court, including cases before a magistrate, and the sum of thirty dollars ($30.00) in superior court, to be remitted to the county in which the judgment is rendered. In all cases where the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used exclusively by the county or municipality for providing, maintaining, and constructing adequate courtroom and related judicial facilities, including: adequate space and furniture for judges, district attorneys, public defenders and other personnel of the Office of Indigent Defense Services, magistrates, juries, and other court related personnel; office space, furniture and vaults for the clerk; jail and juvenile detention facilities; free parking for jurors; and a law library (including books) if one has heretofore been established or if the governing body hereafter decides to establish one. In the event the funds derived from the facilities fees exceed what is needed for these purposes, the county or municipality ~~may, with the approval of the Administrative Officer of the Courts as to the amount,~~may use any or all of the excess to retire outstanding indebtedness incurred in the construction of the facilities, or to reimburse the county or municipality for funds expended in constructing or renovating the facilities (without incurring any indebtedness) within a period of two years before or after the date a district court is established in such county, or to supplement the operations of the General Court of Justice in the county."

SECTION 2. G.S. 143-745(a) reads as rewritten:

"(a) For the purposes of this section:

(1) "Agency head" means the Governor, a Council of State member, a cabinet secretary, ~~the Chief Justice of the Supreme Court,~~ the President of The University of North Carolina, and the Superintendent of Public Instruction.

(2) "State agency" means each department created pursuant to Chapter 143A or 143B of the General Statutes, ~~the Judicial Branch,~~ The University of North Carolina, and the Department of Public Instruction."

SECTION 3. G.S. 7A-343 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:

(1) Collect and compile statistical data and other information on the judicial and financial operation of the courts and on the operation of other offices directly related to and serving the courts.

(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, and magistrates required for the efficient administration of justice.

(3) Prescribe uniform administrative and business methods, systems, forms and records to be used in the offices of the clerks of superior court.

(3a) Establish and staff as necessary an Internal Audit Division of the Judicial Department and the Administrative Office of the Courts that:

a. Evaluates and discloses potential weaknesses in the effectiveness of internal controls in the court system for the purpose of safeguarding public funds and assets and minimizing incidences of fraud, waste, and abuse.

b. Examines and analyzes the design and effectiveness of administrative and procedural operations.

c. Ensures overall compliance with federal and State laws, internal and external regulations, rules and procedures, and other applicable requirements.

d. Inspects and reviews the effectiveness and efficiency of processes and proceedings conducted by judicial officers.

e. Collaborates with other divisions to guide, direct, and support court officials in efforts to conform to both recommended and required compliance standards.

f. Executes routine audits of the Judicial Department's systems and controls, including, but not limited to:

1. Accounting systems and controls.

2. Administrative systems and controls.

3. Electronic data processing systems and controls.

(4) Prepare and submit budget estimates of State appropriations necessary for the maintenance and operation of the Judicial Department, and authorize expenditures from funds appropriated for these purposes.

(5) Investigate, make recommendations concerning, and assist in the securing of adequate physical accommodations for the General Court of Justice.

(6) Procure, distribute, exchange, transfer, and assign such equipment, books, forms and supplies as are to be acquired with State funds for the General Court of Justice.

(7) Make recommendations for the improvement of the operations of the Judicial Department.

(8) Prepare and submit an annual report on the work of the Judicial Department to the Chief Justice, and transmit a copy to each member of the General Assembly.

(9) Assist the Chief Justice in performing his duties relating to the transfer of district court judges for temporary or specialized duty.

(9a) Establish and operate systems and services that provide for electronic filing in the court system and further provide electronic transaction processing and access to court information systems pursuant to G.S. 7A-343.2.

(9b) Enter into contracts with one or more private vendors to provide for the payment of fines, fees, and costs due to the court by credit, charge, or debit cards; such contracts may provide for the assessment of a convenience or transaction fee by the vendor to cover the costs of providing this service.

(9c) Prescribe policies and procedures for the appointment and payment of foreign language interpreters in those cases specified in G.S. 7A-314(f). These policies and procedures shall be applied uniformly throughout the General Court of Justice. After consultation with the Joint Legislative Commission on Governmental Operations, the Director may also convert contractual foreign language interpreter positions to permanent State positions when the Director determines that it is more cost-effective to do so.

(9d) Analyze the use of contractual positions in the Judicial Department and, after consultation with the Joint Legislative Commission on Governmental Operations, convert contractual positions to permanent State positions when the Director determines it is in the best interests of the Judicial Department to do so.

(10) Perform such additional duties and exercise such additional powers as may be prescribed by statute or assigned by the Chief Justice."

SECTION 4. G.S. 7A-108 reads as rewritten:

"**§ 7A-108. Accounting for fees and other receipts; ~~annual~~ audit.**

The Administrative Office of the ~~Courts, subject to the approval of the State Auditor,~~ Courts shall establish procedures for the receipt, deposit, protection, investment, and disbursement of all funds coming into the hands of the clerk of superior court. The fees to be remitted to counties and municipalities shall be paid to them monthly by the clerk of superior court.

The operations of the Administrative Office of the Courts and the Clerks of Superior Court shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes."

SECTION 5. Article 29 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-343.4. Internal audit standards; report and work papers.**

(a) Internal audits shall comply with current Standards for the Professional Practice of Internal Auditing issued by the Institute for Internal Auditors and, when appropriate, Government Auditing Standards issued by the Comptroller General of the United States.

(b) Except as otherwise provided in this section, the Internal Audit Division shall maintain all audit reports, examinations, investigations, surveys, drafts, work papers, and all other documents prepared by the auditors in accordance with the North Carolina Court System's Rules of Recordkeeping and Records Retention and Disposition Schedule (the "Rules"). Except as provided in this section, or upon an order issued in Wake County Superior Court upon 10 days' notice and hearing finding that access is necessary to a proper administration of justice, audit work papers, drafts, and all audit documents other than the final audit report are available only to the Internal Audit Division, the Director, the Chief Financial Officer, Legal Services, and other persons in the auditor's discretion for the limited purpose of

ensuring the accuracy and reliability of the final audit report. Pertinent work papers and other supportive material related to issued audit reports may be, at the discretion of the auditor and unless otherwise prohibited by law, made available for inspection by duly authorized representatives of the State and federal government who desire access to and inspection of such records in connection with some matter officially before them, including criminal investigations.

(c) Where the professional guidelines, government standards, and the Rules fail to specify or are in conflict, the Rules shall govern."

SECTION 6. Article 29 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-343.5. Definitions.**

The following definitions apply in this Article:

(1) "Internal auditing" means an independent, objective assurance and consulting activity designed to add value to and improve an organization's operations. Internal auditing helps an organization accomplish its objectives by using a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, controls, and governance processes. The types of audits the internal auditors may provide include, but are not limited to:

a. Efficiency or economy audits to evaluate areas at risk and require improvements to promote operating effectiveness and efficiency, mitigate the risk of liability, and realize economies.

b. Financial audits to determine whether financial operations are properly functioning.

c. Compliance audits or reviews to assess compliance with laws and regulations.

d. Internal control audits to assess the controls related to financial transactions and reporting.

e. Case file and procedural audits to ensure efficiency, effectiveness, and compliance.

f. Performance and management audits entail an objective and systematic examination of evidence to provide an independent assessment of the performance and management of a program against objective criteria as well as assessments that provide a prospective focus or that synthesize information on best practices.

g. Investigative or fraud audits to make an independent assessment of allegations of fraud, misuse, or process manipulation or alleged violations of federal, State, or local laws.

(2) "Accounting system" means the total structure of records and procedures which discover, record, classify, and report information on the financial position and operating results of the Judicial Department, or a segment of the Judicial Department, or any of its funds, balanced account groups, and organizational components."

SECTION 7. 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) where the district court is supervising a drug treatment court probation judgment under G.S. 7A-272(e), except that the district court has jurisdiction to conduct the revocation proceedings when the chief district court judge and the senior resident superior court judge agree that it is in the interest of justice that the proceedings be conducted by the district court. If the district court exercises jurisdiction under this subsection to revoke probation, appeal of an order revoking probation is to the appellate division."

SECTION 8. G.S. 7A-272 is amended by adding a new subsection 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 a probation judgment 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 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)."

SECTION 9. 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 10. G.S. 15A-1344 is amended by adding a new subsection to read:

"(a1) Authority to Supervise Probation in Drug Treatment Court. – Jurisdiction to supervise and revoke probation imposed in cases in which the offender is required to participate in a drug treatment court is as provided in G.S. 7A-272(e) and G.S. 7A-271(f). Proceedings to modify or revoke probation in these cases must be held in the county in which the drug treatment court or problem-solving court is located."

SECTION 11. G.S. 7A-39 reads as rewritten:

"**§ 7A-39. Cancellation of court sessions and closing court offices; extension of statutes of limitations and other emergency orders in catastrophic conditions.**

(a) Cancellation of Court Sessions, Closing Court Offices. – In response to adverse weather or other emergency situations, including catastrophic conditions, any session of any court of the General Court of Justice may be cancelled, postponed, or altered by judicial officials, and court offices may be closed by judicial branch hiring authorities, pursuant to uniform statewide guidelines prescribed by the Director of the Administrative Office of the Courts. As used in this section, "catastrophic conditions" means any set of circumstances that makes it impossible or extremely hazardous for judicial officials, employees, parties, witnesses, or other persons with business before the courts to reach a courthouse, or that creates a significant risk of physical harm to persons in a courthouse, or that would otherwise convince a reasonable person to avoid traveling to or being in a courthouse.

(b) Authority of Chief Justice. – When the Chief Justice of the North Carolina Supreme Court determines and declares that catastrophic conditions exist or have existed in one or more counties of the State, the Chief Justice may by order entered pursuant to this ~~subsection extend,~~ subsection:

(1) Extend, to a date certain no fewer than 10 days after the effective date of the order, the time or period of limitation within which pleadings, motions, notices, and other documents and papers may be timely filed and other acts may be timely done in civil actions, criminal actions, estates, and special proceedings in each county named in the order. ~~(1) Catastrophic conditions defined. As used in this subsection, "catastrophic conditions" means any set of circumstances that make it impossible or extremely hazardous for~~

~~judicial officials, employees, parties, witnesses, or other persons with business before the courts to reach a courthouse, or that create a significant risk of physical harm to persons in a courthouse, or that would otherwise convince a reasonable person to avoid travelling to or being in the courthouse.~~ ~~(2) Entry of order.~~ –The Chief Justice may enter an order under this subsection during the catastrophic conditions or at any time after ~~catastrophic~~such conditions have ceased to exist. The order shall be in writing and shall become effective for each affected county upon the date set forth in the order, and if no date is set forth in the order, then upon the date the order is signed by the Chief Justice.

(2) Issue any emergency directives that, notwithstanding any other provision of law, are necessary to ensure the continuing operation of essential trial or appellate court functions, including the designation or assignment of judicial officials who may be authorized to act in the general or specific matters stated in the emergency order, and the designation of the county or counties and specific locations within the State where such matters may be heard, conducted, or otherwise transacted. The Chief Justice may enter such emergency orders under this subsection in response to existing or impending catastrophic conditions or their consequences. An emergency order under this subsection shall expire the sooner of the date stated in the order, or 30 days from issuance of the order, but the order may be extended in whole or in part by the Chief Justice for additional 30-day periods if the Chief Justice determines that the directives remain necessary.

(c) In Chambers Jurisdiction Not Affected. – Nothing in this section prohibits a judge or other judicial officer from exercising, during adverse weather or other emergency situations, including catastrophic conditions, any in chambers or ex parte jurisdiction conferred by law upon that judge or judicial officer, as provided by law. The effectiveness of any such exercise shall not be affected by a determination by the Chief Justice that catastrophic conditions existed at the time it was exercised.

(d) Nothing in this section shall be construed to abrogate or diminish the inherent judicial powers of the Chief Justice or the Judicial Branch."

SECTION 12. Sections 7 through 10 of this act become effective December 1, 2009, and apply to probation judgments entered or deferred prosecution agreements executed on or after that date. The remainder of this act becomes effective July 1, 2009.

HOUSE BILL 1269:
AOC Omnibus Courts Act

2009-2010 General Assembly

Committee:	Senate Ref to Judiciary I. If fav, re-ref to Appropriations/Base Budget	**Date:**	June 15, 2009
Introduced by:	Rep. Blue	**Prepared by:**	Karen Cochrane-Brown Staff Attorney
Analysis of:	Second Edition		

SUMMARY: ***HB 1269 would make several changes to statutes related to the Judicial Branch, including elimination of Administrative Office of the Courts approval for excess facility fee use, establishing an internal audit program within the judicial branch, clarifying the jurisdiction of drug treatment courts for probation supervision and revocation, and authorizing the Chief Justice to issue emergency orders for court operations in catastrophic situations.***

BILL ANALYSIS:

Use of excess facilities fees without AOC approval: (Section 1): G.S. 7A-304 provides for costs in criminal actions, including a fee for the use of the courtroom and related judicial facilities. Fees are used for providing and maintaining adequate courtroom and related judicial facilities. If such fees exceed the amount needed for that purpose, with approval of the Administrative Officer of the Court, the county or municipality may use the excess to retire outstanding debt for construction of the facilities, reimburse the county for funds expended in construction, or supplement court operations.

Section 1 removes the requirement for approval by the Administrative Officer of the Court for use of excess funds by local entities.

Internal auditing (Sections 2, 3, 4, 5, and 6): Currently, the Judicial Branch is defined as a State agency subject to Article 79, requiring agencies to establish a program of internal auditing meeting certain criteria.

Section 2 would remove the Judicial Branch from Article 79, making it no longer subject to the general auditing provisions applicable to state agencies.

Section 3 would create a new duty for the Director of the Administrative Office of the Courts to establish and staff as necessary an Internal Audit Division of the Judicial Department and the Administrative Office of the Courts. This division would:

- evaluate and disclose weaknesses in the internal controls of the court system for safeguarding public funds
- analyze effectiveness of administrative and procedural operations
- ensure compliance with law
- review effectiveness and efficiency of processes and proceedings conducted by judicial officers
- collaborate with other divisions to support court officials to conform with compliance standards
- conduct routine audits of accounting systems and controls, administrative systems and controls, and electronic data processing systems and controls.

Section 4 would eliminate State Auditor approval for procedures for handling of funds by clerks of superior court and leave establishment of the procedure to the Administrative Office of the Courts. It would also eliminate the word "annual" in the section catch line.

Section 5 would add a new section to Chapter 7A establishing internal audit standards. Internal audits would be required to comply with the Standards for the Professional Practice of Internal Auditing of the Institute of Internal Auditors and the General Accounting Standards of the Comptroller General of the United States. The section would also establish recordkeeping rules and rules for access to auditing information.

Section 6 would establish a new section in Chapter 7A providing definitions of internal auditing and accounting system.

Jurisdiction of drug treatment courts (Section 7, 8, 9, and 10): These sections would clarify jurisdiction for probation supervision and revocation in drug treatment courts.

Section 7 would create a new subsection, G.S. 7A-271(e), providing that the superior court has exclusive jurisdiction over all hearings to revoke probation where the district court is supervising a drug treatment court probation judgment. The district court would have jurisdiction to conduct the probation revocation if the chief district court judge and senior resident superior court judge agree that such conduct is in the interest of justice. If the district court conducts the hearing and revokes probation, appeal is to the appellate division.

Section 8 would create a new subsection in G.S. 7A-272(e) providing that with the consent of the chief district court judge and senior resident superior court judge, the district court would have jurisdiction to preside over supervision of probation judgments entered in superior court where the defendant was required to participate in a drug treatment court program. The district court could modify or extend the probation judgment, but probation revocation would have to be conducted as provided in G.S. 7A-271 (see Section 7).

Section 9 and 10 would make conforming changes to G.S. 15A-1344 and provide that probation modifications and revocations must be held in the county in which the drug treatment court or problem-solving court is located.

Court closure due to catastrophic conditions: Section 11 would provide for orders related to catastrophic conditions and emergency directives by court officials. Judicial officials would be authorized to cancel or postpone court sessions and close court offices due to catastrophic conditions. The Chief Justice of the Supreme Court would be authorized to issue emergency orders necessary to ensure continuing operation of essential trial or appellate court functions, including designation of judicial officials to act on matters stated in the order and designation of counties and locations for matters to be heard, in response to existing or impending catastrophic conditions or their consequences. Such orders would expire the sooner of a date stated in the order or 30 days from issuance of the order, but may be extended for additional 30 day periods as needed.

EFFECTIVE DATE: Sections 7-10 would become effective December 1, 2009, and apply to probation judgments entered or deferred prosecution agreements executed on or after that date. The remainder of the act would become effective July 1, 2009.

Kara McCraw, counsel to House Judiciary II, substantially contributed to this summary.

H1269-SMRO-122(e2) v1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1269

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

H1269-AST-63 [v.1]

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

Date _____,2009

Senator Blue

moves to amend the bill on page 3, line 45 by inserting the word "internal" before "auditors";

and on page 3, line 51 by inserting the word "internal" before "auditor's";

and on page 4, line 2 by inserting the word "internal" before "auditor".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment 22

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1269 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Tillman
Sen.)

moves to amend the bill on page 6, line 34

( ) WHICH CHANGES THE TITLE

by

deleting "July 1, 2009" and substitute "when it becomes law";

and on page 6, line 34 by deleting "becomes" and substitute "is";

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment 23

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1269 DATE _____

S. B. No. _____ Amendment No. 3
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Blue
Sen.)

1 moves to amend the bill on page 5, line 27
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting the line to read:
4
5 "treatment court.".
6
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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE JUDICIARY I COMMITTEE
(Civil)

July 2, 2009
10:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Thursday, July 2, 2009, in Room 1027 of the Legislative Building.

Vice-Chairman R.C. Soles called the meeting to order and presided due to Chairman Nesbitt needing to attend the House Judiciary I Committee meeting to explain a bill. Senators present were Committee Chairman Martin L. Nesbitt (late), Vice-Chairmen Senators Dan Clodfelter, Pete Brunstetter, R. C. Soles and Josh Stein, members Senators Charlie Albertson, Phil Berger, Dan Blue, Andrew Brock, Harry Brown, Debbie Clary, Ellie Kinnaird, floyd McKissick, David Rouzer and Jerry Tillman, Staff Counsel Erika Churchill, Giles Perry, Susan Sitze and Bill Patterson, Committee Assistant Jan Lee.

Vice-Chairman Soles welcomed the pages serving the committee and recognized Representative Melanie Goodwin to explain HB. 1110 Clarify/Alienation Of Affection/Criminal Conversation. Representative Goodwin presented a Proposed Committee Substitute for H.B. 1110 and on motion by Senator Brunstetter the PCS was adopted for consideration. Representative Goodwin explained the PCS for H.B. 1110. The Reverend Mark Creech, Mr. Jerry Royal, NC. Family Counsel and Mr. Charles Montgomery with the Bar Association were recognized to speak on the bill. After questions and discussion by the committee Senator Tillman moved to amend the bill. Senator Soles displaced the bill to give those working on amendments time to prepare them.

Vice-Chairman Soles recognized Representative Cleveland to explain H.B. 81 Notice of Special/Emergency Meetings. Representative Cleveland presented a Proposed Committee Substitute for H.B. 81 and Senator Brunstetter moved for the adoption for consideration. Representative explained the PCS for H.B. 81 and Staff Counsel Erika Churchill assisted. After questions and discussion by the committee Senator Berger moved to give the PCS for H.B. 81 a favorable report and unfavorable to original bill and it passed. Senator Brown will handle this bill on Senate floor.

Vice-Chairman Soles recognized Representative Melanie Goodwin to explain H.B. 506 – Clarify Entitlement to Counsel/Appointment. A Proposed Committee Substitute was handed out and on motion by Senator Berger it was adopted for consideration. Representative Goodwin explained the bill and after discussion and questions by the committee Senator McKissick made the motion to give the Senate Proposed Committee Substitute for H.B. 506 a favorable report and unfavorable to the original bill. It passed unanimously and Senator Kinnaird will handle it on the Senate floor.

Vice-Chairman Soles recognized Representative Holloway to explain H.B. 1256 – Larceny of a Motor Vehicle Part. Representative Holloway explained the bill and after questions and discussion there were suggestions to amend the bill. Senator Soles displaced H.B. 1256 to come back to later.

Representative Holloway was recognized to explain H.B. 1255 – Sex Offenders/Permanent No Contact Order. Representative Holloway explained the bill and Senator Brock sent forth an amendment. Chairman Nesbitt returned to the committee meeting and presided at this time. Senator Brock explained the amendment assisted by Staff Counsel Susan Sitze. Senator Brock moved for adoption of the amendment and it passed. Senator Brock sent forth a second amendment and moved for adoption. Susan Sitze explained the amendment and it was adopted. Senator Blue presented an amendment and Susan Sitze explained the amendment and it was adopted. Senator Tillman moved to roll the amendments into a Committee Substitute and the Senate PCS for H.B. 1255 be given a favorable report and unfavorable to the original bill. It passed. Senator Blue asked questions and there was discussion concerning the bill. Time ran out for the meeting and Chairman Nesbitt said the bill will be displaced until the next meeting.

The meeting adjourned at 11:00 a.m.

Copies of H.B. 1110(CS #2), Senate PCS for H.B. 1110, Amendment #1 for PCS for H.B. 1110, H.B. 81, Senate PCS for H.B. 81, Bill Analysis for PCS for H.B. 81, H.B. 506, Senate PCS for H.B. 506, Bill Analysis for H.B. 506, H.B. 1256, Bill Analysis for H.B. 1256, H.B. 1255, Amendment #1 for H.B. 1255, Amendment #2 for H.B. 1255, Amendment #3 for H.B. 1255 are attached to these Minutes as Attachments 1,2,3,4,5,6,7,8,9,10,11,12,13,14,15 respectively.

Respectfully Submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W. Lee

Janette W. Lee
Committee Assistant

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Pete Brunstetter, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman
Senator Josh Stein, Vice Chairman

Thursday, July 2, 2009, 10:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills to be considered:

	HB 81	Notice of Special/Emergency Meetings.	Representative Cleveland
	HB 506	Clarify Entitlement to Counsel/Appointment.	Representative Jackson Representative Ross Representative Goodwin
	HB 1110	Clarify/Alien. of Affection/Crim. Conversat'n.	Representative Goodwin
	HB 1255	Sex Offenders/Permanent No Contact Order.	Representative Underhill Representative Holloway Representative Parmon Representative Wiley
	HB 1256	Larceny of a Motor Vehicle Part.	Representative Holloway Representative Braxton Representative Tillis
	HB 1433	Clarify Volunteer Immunity/AED.	Representative Bordsen Representative England, M.D.

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 4

HOUSE BILL 1110

Committee Substitute Favorable 4/30/09
Committee Substitute #2 Favorable 5/12/09
Fourth Edition Engrossed 5/14/09

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 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 three 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 arising from acts occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1110

Committee Substitute Favorable 4/30/09
Committee Substitute #2 Favorable 5/12/09
Fourth Edition Engrossed 5/14/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1110-CSST-64 [v.2]

7/1/2009 4:17:15 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.**

(a) No act of the defendant shall give rise to a cause of action for alienation of affection or criminal conversation that occurs after the date of separation of the plaintiff and the plaintiff's spouse.

(b) An action for alienation of affection or criminal conversation shall not be commenced more than three years from the last act of the defendant giving rise to the cause of action.

(c) A person may commence a cause of action for alienation of affection or criminal conversation against a natural person only.

(d) For purposes of this section, the date of separation shall be interpreted according to Chapter 50 of the General Statutes."

SECTION 2. This act becomes effective October 1, 2009, and applies to actions arising from acts occurring on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1110

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

H1110-AST-85 [v.1]

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

Date 7/7 ,2009

Senator Tillman

moves to amend the bill on page 1, line 10 by rewriting that lines to read:

"or criminal conversation that occurs more than 120 days after the plaintiff and plaintiff's spouse physically".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1110

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

H1110-AST-86 [v.1]

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

Date 7/7 ,2009

Senator Berger of Rockingham

moves to amend the bill on page 1, line 10 by deleting the phrase "or criminal conversation".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 81

Committee Substitute Favorable 3/3/09
Committee Substitute #2 Favorable 4/29/09

Short Title: Notice of Special/Emergency Meetings. (Public)

Sponsors:

Referred to:

February 9, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NOTICE OF SPECIAL AND EMERGENCY MEETINGS UNDER THE OPEN MEETINGS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-318.12 reads as rewritten:

"**§ 143-318.12. Public notice of official meetings.**

(a) If a public body has established, by ordinance, resolution, or otherwise, a schedule of regular meetings, it shall cause a current copy of that schedule, showing the time and place of regular meetings, to be kept on file as follows:

(1) For public bodies that are part of State government, with the Secretary of State;

(2) For the governing board and each other public body that is part of a county government, with the clerk to the board of county commissioners;

(3) For the governing board and each other public body that is part of a city government, with the city clerk;

(4) For each other public body, with its clerk or secretary, or, if the public body does not have a clerk or secretary, with the clerk to the board of county commissioners in the county in which the public body normally holds its meetings.

If a public body changes its schedule of regular meetings, it shall cause the revised schedule to be filed as provided in subdivisions (1) through (4) of this subsection at least seven calendar days before the day of the first meeting held pursuant to the revised schedule.

(b) If a public body holds an official meeting at any time or place other than a time or place shown on the schedule filed pursuant to subsection (a) of this section, it shall give public notice of the time and place of that meeting as provided in this subsection.

(1) If a public body recesses a regular, special, or emergency meeting held pursuant to public notice given in compliance with this subsection, and the time and place at which the meeting is to be continued is announced in open session, no further notice shall be required.

(2) For any other meeting, except an emergency meeting, the public body shall cause written notice of the meeting stating its purpose (i) to be posted on the principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room, and (ii) to be ~~mailed~~ mailed, e-mailed, or delivered to each newspaper, wire service, radio station, and television station~~, which~~ that has filed a written request for notice with the clerk or secretary of the public body or with some other person

designated by the public body. The public body shall also cause notice to be ~~mailed~~ mailed, e-mailed, or delivered to any person, in addition to the representatives of the media listed above, who has filed a written request with the clerk, secretary, or other person designated by the public body. This notice shall be posted and ~~mailed~~ mailed, e-mailed, or delivered at least 48 hours before the time of the meeting. The notice required to be posted on the principal bulletin board or at the door of its usual meeting room shall be posted on the door of the building or on the building in an area accessible to the public if the building containing the principal bulletin board or usual meeting room is closed to the public continuously for 48 hours before the time of the meeting. The public body may require each newspaper, wire service, radio station, and television station submitting a written request for notice to renew the request annually. The public body shall charge a fee to persons other than the media, who request notice, of ten dollars ($10.00) per calendar year, and may require them to renew their requests quarterly. No fee shall be charged for notices sent by e-mail.

(3) For an emergency meeting, the public body shall cause notice of the meeting to be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written request, which includes the newspaper's, wire service's, or station's telephone number, for emergency notice with the clerk or secretary of the public body or with some other person designated by the public body. This notice shall be given either by e-mail, by ~~telephone~~ telephone, or by the same method used to notify the members of the public body and shall be given immediately after notice has been given to those members. This notice shall be given at the expense of the party notified. ~~An "emergency meeting" is one called because of generally unexpected circumstances that require immediate consideration by the public body.~~ Only business connected with the emergency may be considered at a meeting to which notice is given pursuant to this paragraph.

(c) Repealed by Session Laws 1991, c. 694, s. 6.

(d) If a public body has a Web site and has established a schedule of regular meetings, the public body shall post the schedule of regular meetings to the Web site.

(e) If a public body has a Web site that one or more of its employees maintains, the public body shall post notice of any meeting held under subdivisions (b)(1) and (b)(2) of this section prior to the scheduled time of that meeting.

(f) For purposes of this section, an "emergency meeting" is one called because of generally unexpected circumstances that require immediate consideration by the public body."

SECTION 2. This act is effective for open meetings noticed on or after July 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 81
Committee Substitute Favorable 3/3/09
Committee Substitute #2 Favorable 4/29/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H81-CSST-65 [v.1]

7/1/2009 9:41:11 AM

Short Title: Notice of Special/Emergency Meetings. (Public)

Sponsors:

Referred to:

February 9, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NOTICE OF SPECIAL AND EMERGENCY MEETINGS UNDER THE OPEN MEETINGS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-318.12 reads as rewritten:

"**§ 143-318.12. Public notice of official meetings.**

(a) If a public body has established, by ordinance, resolution, or otherwise, a schedule of regular meetings, it shall cause a current copy of that schedule, showing the time and place of regular meetings, to be kept on file as follows:

(1) For public bodies that are part of State government, with the Secretary of State;

(2) For the governing board and each other public body that is part of a county government, with the clerk to the board of county commissioners;

(3) For the governing board and each other public body that is part of a city government, with the city clerk;

(4) For each other public body, with its clerk or secretary, or, if the public body does not have a clerk or secretary, with the clerk to the board of county commissioners in the county in which the public body normally holds its meetings.

If a public body changes its schedule of regular meetings, it shall cause the revised schedule to be filed as provided in subdivisions (1) through (4) of this subsection at least seven calendar days before the day of the first meeting held pursuant to the revised schedule.

(b) If a public body holds an official meeting at any time or place other than a time or place shown on the schedule filed pursuant to subsection (a) of this section, it shall give public notice of the time and place of that meeting as provided in this subsection.

(1) If a public body recesses a regular, special, or emergency meeting held pursuant to public notice given in compliance with this subsection, and the time and place at which the meeting is to be continued is announced in open session, no further notice shall be required.

(2) For any other meeting, except an emergency meeting, the public body shall cause written notice of the meeting stating its purpose (i) to be posted on the principal bulletin board of the public body or, if the public body has no such

bulletin board, at the door of its usual meeting room, and (ii) to be ~~mailed~~ mailed, e-mailed, or delivered to each newspaper, wire service, radio station, and television station~~, which~~ that has filed a written request for notice with the clerk or secretary of the public body or with some other person designated by the public body. The public body shall also cause notice to be ~~mailed~~ mailed, e-mailed, or delivered to any person, in addition to the representatives of the media listed above, who has filed a written request with the clerk, secretary, or other person designated by the public body. This notice shall be posted and ~~mailed~~ mailed, e-mailed, or delivered at least 48 hours before the time of the meeting. The notice required to be posted on the principal bulletin board or at the door of its usual meeting room shall be posted on the door of the building or on the building in an area accessible to the public if the building containing the principal bulletin board or usual meeting room is closed to the public continuously for 48 hours before the time of the meeting. The public body may require each newspaper, wire service, radio station, and television station submitting a written request for notice to renew the request annually. The public body shall charge a fee to persons other than the media, who request notice, of ten dollars ($10.00) per calendar year, and may require them to renew their requests quarterly. No fee shall be charged for notices sent by e-mail.

(3) For an emergency meeting, the public body shall cause notice of the meeting to be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written request, which includes the newspaper's, wire service's, or station's telephone number, for emergency notice with the clerk or secretary of the public body or with some other person designated by the public body. This notice shall be given either by e-mail, by ~~telephone~~ telephone, or by the same method used to notify the members of the public body and shall be given immediately after notice has been given to those members. This notice shall be given at the expense of the party notified. ~~An "emergency meeting" is one called because of generally unexpected circumstances that require immediate consideration by the public body.~~ Only business connected with the emergency may be considered at a meeting to which notice is given pursuant to this paragraph.

(c) Repealed by Session Laws 1991, c. 694, s. 6.

(d) If a public body has a Web site and has established a schedule of regular meetings, the public body shall post the schedule of regular meetings to the Web site.

(e) If a public body has a Web site that one or more of its employees maintains, the public body shall post notice of any meeting held under subdivisions (b)(1) and (b)(2) of this section prior to the scheduled time of that meeting.

(f) For purposes of this section, an "emergency meeting" is one called because of generally unexpected circumstances that require immediate consideration by the public body."

SECTION 2. This act is effective for open meetings noticed on or after October 1, 2009.

HOUSE BILL 81:
Notice of Special/Emergency Meetings

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	July 1, 2009
Introduced by:	Rep. Cleveland	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to Third Edition H81-CSST-65		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 81 would amend the Open Meetings law with respect to notice of official meetings.***

CURRENT LAW: When a public body has an official meeting, that public body is required to give notice of the official meeting. Notice of regular meetings may be given by establishing a schedule of regular meetings and filing that schedule with the appropriate person.

Emergency meetings are meetings called because of generally unexpected circumstances that require immediate consideration by the public body. Notice of emergency meetings must be given to those entities that have filed a written request to receive notice of meetings from the public body, and that notice may be given by phone or by the same method used to notify the public body members.

Meetings other than regular meetings and emergency meetings must have written notice of the meeting complying with all of the following:

1. Posted on the principal bulletin board of the public body, or if there none, at the door of its usual meeting room.
2. Mailed or delivered to each newspaper, wire service, radio station and TV station, and any other person that has filed a written request for notice of meetings. The public body may require these entities to annually renew the request, and may charge $10.00 of persons other than the media.
3. The notice is given at least 48 hours before the time of the official meeting.

G.S. 143-318.12.

BILL ANALYSIS: The proposed committee substitute would:

- Require that any public body with a Web site publish notice of regular meetings on that Web site. This posting would be in addition the already required notices.
- Require that any public body maintaining its own Web site publish notice of special and emergency meetings.
- Require that notice of official meetings required to be posted on the principal bulletin board or door of the usual meeting room, be posted on the door of the building or on the building in an area accessible to the public if the building is closed during the 48 hours prior to the meeting.
- Allow for e-mails in lieu of written mail sent by the U.S. Post Office or other method of delivery.
- No fee may be charged for notices given by e-mail.
- For those entities filing a written request for notice of official meetings, including emergency meetings, that notice may be delivered by e-mail.
- Changes the placement of the definition of emergency meeting, clarifying that the definition applies to the entire section, G.S. 143-138.12, rather than just subdivision (b)(3) of that section.

EFFECTIVE DATE: The act applies with respect to meetings noticed on or after October 1, 2009.

H81-SMST-55(CSST-65) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 506
Committee Substitute Favorable 3/25/09

Short Title: Clarify Entitlement to Counsel/Appointment. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFICATIONS TO THE ENTITLEMENT TO COUNSEL AND THE PROCEDURES FOR APPOINTMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 35A-1116 reads as rewritten:

"**§ 35A-1116. Costs and fees.**

(a) Costs. – Except as otherwise provided herein, costs shall be assessed as in special proceedings. Costs, including any reasonable fees and expenses of counsel for the petitioner which the clerk, in his discretion, may allow, may be taxed against either party in the discretion of the court unless:

(1) The clerk finds that the petitioner did not have reasonable grounds to bring the proceeding, in which case costs shall be taxed to the petitioner; or

(2) The respondent is indigent, in which case the costs shall be waived by the clerk if not taxed against the petitioner as provided above or otherwise paid as provided in subsection (b) or (c).

(b) Multidisciplinary Evaluation. – The cost of a multidisciplinary evaluation order pursuant to G.S. 35A-1111 shall be assessed as follows:

(1) If the respondent is adjudicated incompetent and is not indigent, the cost shall be assessed against the respondent;

(2) If the respondent is adjudicated incompetent and is indigent, the cost shall be borne by the Department of Health and Human Services;

(3) If the respondent is not adjudicated incompetent, the cost may be taxed against either party, apportioned among the parties, or borne by the Department of Health and Human Services, in the discretion of the court.

(c) Witness. – Witness fees ~~and the fees of court-appointed counsel or guardian ad litem~~ shall be paid by:

(1) The respondent, if the respondent is adjudicated incompetent and is not indigent;

(2) The petitioner, if the respondent is not adjudicated incompetent and the clerk finds that there were not reasonable grounds to bring the proceeding;

(2a) The petitioner for any of the petitioner's witnesses, and the respondent for any of the respondent's witnesses, when the clerk finds all of the following:

a. There were reasonable grounds to bring the proceeding.

b. The respondent was not adjudicated incompetent.

c. The respondent is not indigent.

(3) The Administrative Office of the Courts ~~in all other cases.~~ for witness fees for the respondent, if the respondent is indigent.

(c1) Mediator. – Mediator fees and other costs associated with mediation shall be assessed in accordance with G.S. 7A-38.3B.

(c2) Guardian ad litem. – The fees of an appointed guardian ad litem shall be paid by:

(1) The respondent, if:

a. The respondent is adjudicated incompetent; and

b. The respondent is not indigent.

(2) The respondent, if:

a. The respondent is not adjudicated incompetent;

b. The clerk finds that there were reasonable grounds to bring the proceeding; and

c. The respondent is not indigent.

(3) The petitioner, if:

a. The respondent is not adjudicated incompetent; and

b. The clerk finds that there were not reasonable grounds to bring the proceedings.

(4) The Office of Indigent Defense Services in all other cases.

(d) The provisions of this section shall also apply to all parties to any proceedings under this Chapter, including a guardian who has been removed from office and the sureties on the guardian's bond."

SECTION 2. Article 5 of Chapter 35A of the General Statutes is amended by adding a new section to read:

"**§ 35A-1217. Appointment of guardian ad litem for incompetent ward.**

The clerk shall appoint a guardian ad litem to represent a ward in a proceeding under this Subchapter if the ward has been adjudicated incompetent under Subchapter I and the clerk determines that the ward's interests are not adequately represented. Appointment and discharge of the guardian ad litem shall be in accordance with rules adopted by the Office of Indigent Defense Services. Nothing herein shall affect the ward's right to retain counsel of his or her own choice."

SECTION 3. G.S. 7A-451(a) is amended by adding a new subdivision to read:

"(18) A proceeding involving placement into satellite monitoring under Part 5 of Article 27A of Chapter 14 of the General Statutes."

SECTION 4. G.S. 14-208.40B(b) reads as rewritten:

"(b) If the Department determines that the offender falls into one of the categories described in G.S. 14-208.40(a), the district attorney, representing the Department, ~~Department~~ shall schedule a hearing in ~~the~~ superior court ~~of~~ for the county in which the offender resides. The Department shall notify the offender of the Department's determination and the date of the scheduled hearing by certified mail sent to the address provided by the offender pursuant to G.S. 14-208.7. The hearing shall be scheduled no sooner than 15 days from the date the notification is mailed. Receipt of notification shall be presumed to be the date indicated by the certified mail receipt. Upon the court's determination that the offender is indigent and entitled to counsel, the court shall assign counsel to represent the offender at the hearing pursuant to rules adopted by the Office of Indigent Defense Services."

SECTION 5. G.S. 7A-451(c) reads as rewritten:

"(c) In any capital case, an indigent defendant who is under a sentence of death and desires counsel may apply to the ~~superior court of the district where the defendant was indicted~~ Office of Indigent Defense Services for the appointment of counsel to represent the defendant in preparing, filing, and litigating a motion for appropriate relief. The application for the appointment of such postconviction counsel may be made prior to completion of review on direct appeal and shall be made no later than 10 days from the latest of the following:

(1) The mandate has been issued by the Supreme Court of North Carolina on direct appeal pursuant to N.C.R. App. P. 32(b) and the time for filing a

petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;

(2) The United States Supreme Court denied a timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina; or

(3) The United States Supreme Court granted the defendant's or the State's timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina, but subsequently left the defendant's death sentence undisturbed.

~~If there is not a criminal or mixed session of superior court scheduled for that district, the application must be made no later than 10 days from the beginning of the next criminal or mixed session of superior court in the district.~~

(c1) Upon application, supported by the defendant's affidavit, ~~the superior court shall enter an order appointing the Office of Indigent Defense Services if the court finds that the defendant is indigent and desires counsel, and~~ the Office of Indigent Defense Services shall determine whether the defendant was previously adjudicated indigent for purposes of trial or direct appeal. If the defendant was previously adjudicated indigent, the defendant shall be presumed indigent for purposes of this subsection and the Office of Indigent Defense Services shall appoint two counsel to represent the defendant. If the defendant was not previously adjudicated indigent, the Office of Indigent Defense Services shall request that the superior court in the district where the defendant was indicted determine whether the defendant is indigent. If the court finds that the defendant is indigent, the Office of Indigent Defense Services shall then appoint two counsel to represent the defendant.

(c2) The defendant does not have a right to be present at the time of appointment of counsel, and the appointment need not be made in open court. ~~If the defendant was previously adjudicated an indigent for purposes of trial or direct appeal, the defendant shall be presumed indigent for purposes of this subsection.~~"

SECTION 6. This act becomes effective July 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 506
Committee Substitute Favorable 3/25/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H506-CSRW-58 [v.3]

7/1/2009 4:39:06 PM

Short Title: Clarify Entitlement to Counsel/Appointment. (Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY RESPONSIBILITY FOR PAYMENT OF WITNESS FEES AND GUARDIAN AD ITEM FEES IN INCOMPETENCY PROCEEDINGS; AUTHORIZE APPOINTMENT OF A GUARDIAN AD LITEM FOR A PERSON WHO IS ADJUDICATED INCOMPETENT; PROVIDE FOR APPOINTMENT OF COUNSEL FOR AN INDIGENT PERSON IN CERTAIN PROCEEDINGS INVOLVING SATELLITE-BASED MONITORING OF SEX OFFENDERS; PROVIDE FOR REPRESENTATION FOR THE DEPARTMENT OF CORRECTION AND APPOINTMENT OF COUNSEL FOR INDIGENT OFFENDERS IN SATELLITE-BASED MONITORING PROCEEDINGS; AND PROVIDE FOR APPOINTMENT OF COUNSEL BY THE OFFICE OF INDIGENT DEFENSE SERVICES IN CAPITAL CASES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 35A-1116 reads as rewritten:

"**§ 35A-1116. Costs and fees.**

(a) Costs. – Except as otherwise provided herein, costs shall be assessed as in special proceedings. Costs, including any reasonable fees and expenses of counsel for the petitioner which the clerk, in his discretion, may allow, may be taxed against either party in the discretion of the court unless:

(1) The clerk finds that the petitioner did not have reasonable grounds to bring the proceeding, in which case costs shall be taxed to the petitioner; or

(2) The respondent is indigent, in which case the costs shall be waived by the clerk if not taxed against the petitioner as provided above or otherwise paid as provided in subsection (b) or (c).

(b) Multidisciplinary Evaluation. – The cost of a multidisciplinary evaluation order pursuant to G.S. 35A-1111 shall be assessed as follows:

(1) If the respondent is adjudicated incompetent and is not indigent, the cost shall be assessed against the respondent;

(2) If the respondent is adjudicated incompetent and is indigent, the cost shall be borne by the Department of Health and Human Services;

(3) If the respondent is not adjudicated incompetent, the cost may be taxed against either party, apportioned among the parties, or borne by the Department of Health and Human Services, in the discretion of the court.

(c) Witness. – Witness fees ~~and the fees of court-appointed counsel or guardian ad litem~~ shall be paid by:

(1) The respondent, if the respondent is adjudicated incompetent and is not indigent;

(2) The petitioner, if the respondent is not adjudicated incompetent and the clerk finds that there were not reasonable grounds to bring the proceeding;

(2a) The petitioner for any of the petitioner's witnesses, and the respondent for any of the respondent's witnesses, when the clerk finds all of the following:

a. There were reasonable grounds to bring the proceeding.

b. The respondent was not adjudicated incompetent.

c. The respondent is not indigent.

(3) The Administrative Office of the Courts ~~in all other cases.~~ for witness fees for the respondent, if the respondent is indigent.

(c1) Mediator. – Mediator fees and other costs associated with mediation shall be assessed in accordance with G.S. 7A-38.3B.

(c2) Guardian ad litem. – The fees of an appointed guardian ad litem shall be paid by:

(1) The respondent, if:

a. The respondent is adjudicated incompetent; and

b. The respondent is not indigent.

(2) The respondent, if:

a. The respondent is not adjudicated incompetent;

b. The clerk finds that there were reasonable grounds to bring the proceeding; and

c. The respondent is not indigent.

(3) The petitioner, if:

a. The respondent is not adjudicated incompetent; and

b. The clerk finds that there were not reasonable grounds to bring the proceedings.

(4) The Office of Indigent Defense Services in all other cases.

(d) The provisions of this section shall also apply to all parties to any proceedings under this Chapter, including a guardian who has been removed from office and the sureties on the guardian's bond."

SECTION 2. Article 5 of Chapter 35A of the General Statutes is amended by adding a new section to read:

"**§ 35A-1217. Appointment of guardian ad litem for incompetent ward.**

The clerk shall appoint a guardian ad litem to represent a ward in a proceeding under this Subchapter if the ward has been adjudicated incompetent under Subchapter I and the clerk determines that the ward's interests are not adequately represented. Appointment and discharge of the guardian ad litem shall be in accordance with rules adopted by the Office of Indigent Defense Services. Nothing herein shall affect the ward's right to retain counsel of his or her own choice."

SECTION 3. G.S. 7A-451(a) is amended by adding a new subdivision to read:

"(18) A proceeding involving placement into satellite monitoring under Part 5 of Article 27A of Chapter 14 of the General Statutes."

SECTION 4. G.S. 14-208.40B(b) reads as rewritten:

"(b) If the Department determines that the offender falls into one of the categories described in G.S. 14-208.40(a), the district attorney, representing the Department, ~~Department~~ shall schedule a hearing in ~~the~~ superior court ~~of~~ for the county in which the offender resides. The Department shall notify the offender of the Department's determination and the date of the scheduled hearing by certified mail sent to the address provided by the offender pursuant to G.S. 14-208.7. The hearing shall be scheduled no sooner than 15 days from the date the

notification is mailed. Receipt of notification shall be presumed to be the date indicated by the certified mail receipt. Upon the court's determination that the offender is indigent and entitled to counsel, the court shall assign counsel to represent the offender at the hearing pursuant to rules adopted by the Office of Indigent Defense Services."

SECTION 5. G.S. 7A-451(c) reads as rewritten:

"(c) In any capital case, an indigent defendant who is under a sentence of death and desires counsel may apply to the ~~superior court of the district where the defendant was indicted~~ Office of Indigent Defense Services for the appointment of counsel to represent the defendant in preparing, filing, and litigating a motion for appropriate relief. The application for the appointment of such postconviction counsel may be made prior to completion of review on direct appeal and shall be made no later than 10 days from the latest of the following:

(1) The mandate has been issued by the Supreme Court of North Carolina on direct appeal pursuant to N.C.R. App. P. 32(b) and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;

(2) The United States Supreme Court denied a timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina; or

(3) The United States Supreme Court granted the defendant's or the State's timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina, but subsequently left the defendant's death sentence undisturbed.

~~If there is not a criminal or mixed session of superior court scheduled for that district, the application must be made no later than 10 days from the beginning of the next criminal or mixed session of superior court in the district.~~

(c1) Upon application, supported by the defendant's affidavit, ~~the superior court shall enter an order appointing the Office of Indigent Defense Services if the court finds that the defendant is indigent and desires counsel, and~~ the Office of Indigent Defense Services shall determine whether the defendant was previously adjudicated indigent for purposes of trial or direct appeal. If the defendant was previously adjudicated indigent, the defendant shall be presumed indigent for purposes of this subsection and the Office of Indigent Defense Services shall appoint two counsel to represent the defendant. If the defendant was not previously adjudicated indigent, the Office of Indigent Defense Services shall request that the superior court in the district where the defendant was indicted determine whether the defendant is indigent. If the court finds that the defendant is indigent, the Office of Indigent Defense Services shall then appoint two counsel to represent the defendant.

(c2) The defendant does not have a right to be present at the time of appointment of counsel, and the appointment need not be made in open court. ~~If the defendant was previously adjudicated an indigent for purposes of trial or direct appeal, the defendant shall be presumed indigent for purposes of this subsection.~~"

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

HOUSE BILL 506:
Clarify Entitlement to Counsel/Appointment

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 30, 2009
Introduced by:	Reps. Goodwin, Ross, Jackson	**Prepared by:**	Giles S. Perry
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 506 (PCS) makes changes to State law concerning:

- *payment of witness fees and guardian ad item fees in incompetency proceedings.*
- *appointment of a guardian ad litem for a person who is adjudicated incompetent.*
- *appointment of counsel for an indigent person in a proceedings involving satellite-based monitoring of sex offenders.*
- *representation for the Department of Correction in sex offender satellite-based monitoring proceedings, and appointment of counsel for indigent offenders in those proceedings.*
- *appointment of counsel by the Office of Indigent Defense Services in capital cases.*

The proposed committee substitute changes the effective date, and the title to the bill.

CURRENT LAW:

Subchapters I and II of Chapter 35A of the General Statutes set out the procedure for adjudication of a person as incompetent, and for appointment of a guardian of the incompetent person.

Subchapter IX of Chapter 7A of the General Statutes governs the entitlement of an indigent person to counsel. This subchapter lists the actions and proceedings in which an indigent person is entitled to representation of counsel

Part 5 of Article 27A of Chapter 14 of the General Statutes governs the sex offender satellite-based monitoring program. Under that program, the Department of Correction is required to determine whether persons who have been convicted of a reportable sex offense, and who has not been evaluated by a court concerning enrollment in the sex offender satellite-based monitoring program, should be enrolled in the program. The Department is also required to schedule a judicial hearing on the question.

BILL ANALYSIS:

Witness fees and guardian ad item fees in incompetency proceedings

Section 1 of the bill provides circumstances under which the petitioner, respondent, or Administrative Office of the Courts are required to pay witness fees in an incompetency action. The section also provides circumstances under which the petitioner, respondent, or Office of Indigent Defense Services is required to pay guardian ad litem fees in an incompetency action.

Appointment of a guardian ad litem for a person who is adjudicated incompetent

Section 2 of the bill authorizes the clerk of superior court to appoint a guardian ad litem in a guardian proceeding, if the clerk determines the wards' interests are not being adequately represented.

Appointment of counsel for an indigent person in a proceedings involving satellite-based monitoring of sex offenders

Section 3 of the bill provides that an indigent person is entitled to appointed counsel in a proceedings involving placement into the satellite-based monitoring of sex offenders program.

Representation for the Department of Correction in sex offender satellite-based monitoring proceedings, and appointment of counsel for indigent offenders in those proceedings

Section 4 of the bill amends the law pertains to the hearing where it is determined whether certain sex offenders are placed into the satellite-based monitoring program. The current law does not indicate who represents the Department of Correction, or in which court (district or superior) the hearing would take place. In that the offender is not in the status of a criminal defendant, it was also unclear as to whether appointment of counsel for an indigent was authorized. (See Section 3, above). This section of the bill clarifies that the district attorney represents the Department of Correction, and schedules the hearing. The offender is entitled to legal counsel if indigent, and one is to be appointed under the rules of the Office of Indigent Defense Services.

Appointment of counsel by the Office of Indigent Defense Services in capital cases.

Section 5 of the bill amends the law governing representation of death row inmates in post-conviction proceedings (Motions for Appropriate Relief). This section provides that instead of applying to the superior court for appointment of counsel, a defendant who desires counsel may apply directly to the Office of Indigent Services (OIDS). If the defendant was adjudicated indigent for the trial or direct appeal, then the OIDS appoints the counsel. If not previously adjudicated indigent, then OIDS requests the superior court where the defendant was indicted to make that determination. Upon a court finding of indigency, the OIDS appoints the counsel.

EFFECTIVE DATE: This act becomes when it becomes law.

Hal Pell of the Research Division substantially contributed to this summary.

H506-SMRW-169(e2) v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 1256
Committee Substitute Favorable 5/12/09
Third Edition Engrossed 5/13/09

Short Title: Larceny of a Motor Vehicle Part. (Public)

Sponsors:

Referred to:

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 may 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.

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:	Senate Judiciary I	**Date:**	July 1, 2009
Introduced by:	Reps. Holloway, Tillis, Braxton	**Prepared by:**	Susan Sitze*
Analysis of:	Third Edition		Committee Counsel

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 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.

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

H1256-SMSA-118(e3) v1

**Brenda Carter, Staff Attorney, contributed substantially to this summary.*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1255
Second Edition Engrossed 5/14/09

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 or victim 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 court may grant one or more of the following forms of relief in a permanent no contact order under this Article:

(1) Order the defendant not to threaten, visit, assault, molest, or otherwise interfere with the victim.

(2) Order the defendant not to follow the victim, including at the victim's workplace.

(3) Order the defendant not to harass the victim.

(4) Order the defendant not to abuse or injure the victim.

(5) Order the defendant not to contact the victim by telephone, written communication, or electronic means.

(6) Order the defendant to refrain from entering or remaining present at the victim's residence, school, place of employment, or other specified places at times when the victim is present.

(7) Order other relief deemed necessary and appropriate by the court.

(g) A permanent no contact order entered pursuant to this Article shall be enforced by all North Carolina law enforcement agencies without further order of the court. 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 permanent no contact order. A person who knowingly violates a permanent no contact order is guilty of a Class A1 misdemeanor.

(h) 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.

Attachment 13

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1255

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

H1255-ASA-30 [v.1]

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

Date 7-2-09 ,2009

Senator Brock

moves to amend the bill on page 2, lines 19-20
by rewriting the lines to read:
"enforcement officer shall arrest and take a person in to custody, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated a"

SIGNED Andrew Brock
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment 14

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1255

AMENDMENT NO. 2
(to be filled in by Principal Clerk)

H1255-ASA-31 [v.1]

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

Date 7-1-09 ,2009

Senator Brock

moves to amend the bill on page 1, line 26
by deleting the phrase "or victim"

and on page 1, lines 28-29
by inserting between those lines:
"(e) The victim shall have a right to be heard at the show cause hearing."

And on page 1, line 29
By deleting "(e)" and inserting "(f)"

And on page 2, line 3
By deleting "(f)" and inserting "(g)"

And on page 2, line 17
By deleting "(g)" and inserting "(h)"

And on page 2, line 23
By deleting "(h)" and inserting "(i)"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT **Attachment 15**

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1255 DATE 7-2-09

S. B. No. _____ Amendment No. 3
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
(Sen.) Blue

1 moves to amend the bill on page 1, line 26
2 ( ) WHICH CHANGES THE TITLE
3 by inserting between "the" and "order", the following: "permanent
4 no contact"
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE JUDICIARY I COMMITTEE
(Civil)

July 7, 2009
10:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Tuesday, July 7, 2009, in Room 1027 of the Legislative Building. Senators present were; Committee Chairman Martin Nesbitt, Vice-Chairmen Dan Clodfelter, R. C. Soles, Pete Brunstetter and Josh Stein; members Senators Charlie Albertson, Dan Blue Andrew Brock, Harry Brown, Phil Berger, David Hoyle, Clark Jenkins, Ellie Kinnaird, Floyd McKissick, Tony Rand, David Rouzer and Jerry Tillman. Staff Counsel Erika Churchill, Giles Perry, Bill Patterson, and Susan Sitze, Committee Assistants Jan Lee, Jessica Kozma Bennett and Intern Juliana Proctor.

Chairman Nesbitt recognized Representative Bordsen to explain H.B. 1433 – Clarify Volunteer Immunity/AED. A bill analysis was distributed to committee members and Representative Bordsen explained the bill. Senator Nesbitt asked staff if they had further explanation and they said Representative Bordsen had explained the bill correctly. There was extensive questions and discussion by the committee members. There was a suggestion about changing language and an amendment. The bill was temporarily displaced.

Representative Goodwin's H.B. 1110 was displaced at an earlier meeting to be worked on. A Proposed Committee Substitute was distributed to the members and adopted for discussion by motion of Senator Kinnaird. Chairman Nesbitt recognized Staff Counsel Erika Churchill to explain the bill. She explained changes made in the bill. Shelby Benton, a Practioner of family law, and Tami Fitzgerald of the Christian Action League spoke on the bill and answered questions from the committee members. After an extensive discussion and questions Senator Tillman offered an amendment and the amendment failed. Senator Berger offered an amendment and it also failed. Senator McKissick offered an amendment and moved it be adopted and it passed. Senator McKissick moved that the amendment be rolled into the PCS for H.B. 1110 and be given a favorable report and unfavorable to the original bill. It passed. Senator Blue will handle the bill on floor of the Senate.

The meeting was adjourned.

Copies of H.B. 1433, Bill Analysis of H.B. 1433, H.B. 1110, Amendments for H.B. 1110,Bill Analysis for H.B. 1110 are attached to these Minutes as Attachments 1,2,3,4,5, respectively.

Respectfully Submitted,

Senator Martin L. Nesbitt
Chairman

Janette W. Lee
Committee Assistant

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:	Senate Judiciary I	**Date:**	July 1, 2009
Introduced by:	Reps. England, Bordsen	**Prepared by:**	Giles S. Perry
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-SMRW-170(e2) v1

Susan Sitze and Theresa Matula of the Research Division contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 4

HOUSE BILL 1110

Committee Substitute Favorable 4/30/09
Committee Substitute #2 Favorable 5/12/09
Fourth Edition Engrossed 5/14/09

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 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 three 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 arising from acts occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1110

Committee Substitute Favorable 4/30/09
Committee Substitute #2 Favorable 5/12/09
Fourth Edition Engrossed 5/14/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1110-CSST-64 [v.3]

7/6/2009 11:00:38 AM

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.**

(a) No act of the defendant shall give rise to a cause of action for alienation of affection or criminal conversation that occurs after the plaintiff and the plaintiff's spouse physically separate with the intent that the physical separation remain permanent.

(b) An action for alienation of affection or criminal conversation shall not be commenced more than three years from the last act of the defendant giving rise to the cause of action.

(c) A person may commence a cause of action for alienation of affection or criminal conversation against a natural person only."

SECTION 2. This act becomes effective October 1, 2009, and applies to actions arising from acts occurring on or after that date.

HOUSE BILL 1110:
Clarify/Alien. of Affection/Crim. Conversat'n

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	July 6, 2009
Introduced by:	Rep. Goodwin	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to Fourth Edition H1110-CSST-64		Committee Counsel

SUMMARY: ***HB 1110 would create a new statute in Chapter 52 (Powers and Liabilities of Married Persons) to provide for procedures in causes of action for alienation of affection and criminal conversation, including a prohibition on claims arising from acts occurring after the date of separation, and a three year statute of limitations.***

CURRENT LAW:

Alienation of Affection: A common law cause of action for alienation of affections is recognized in North Carolina. Cannon v. Miller, 313 N.C. 324 (1985). The action is comprised of wrongful acts which deprive a married person of the affections of their spouse, including love, society, companionship, and comfort. To sustain a common law cause of action for alienation of affection, a plaintiff must show:

- That the plaintiff and the plaintiff's spouse were happily married and that a genuine love and affection existed between them,
- That the love and affection so existing was alienated and destroyed, and
- That the wrongful and malicious acts of the defendant produced and brought about the loss and alienation of such love and affection.

Criminal Conversation: A common law action for criminal conversation is recognized in North Carolina. Cannon v. Miller, 313 N.C. 324 (1985). Criminal conversation is synonymous with adultery. To sustain a cause of action for criminal conversation, a plaintiff must show:

- The actual marriage between the spouses, and
- Sexual intercourse between defendant and plaintiff's spouse during coverture.

Alienation of affection is not a necessary element of criminal conversation. The mere fact of separation does not bar an action for criminal conversation occurring during the separation. Johnson v Pearce, 148 N.C. App 199 (1984).

Statute of Limitations: G.S. 1-52 (5) provides for a three year statute of limitations for criminal conversation or any other injury to the person or rights of another, not arising from contract or otherwise enumerated. The three year statute of limitations has also been held to apply to claims of alienation of affection In 2006, the N.C. Supreme Court held that a cause of action accrues in an claim for alienation of affection whenever alienation is complete, regardless of the date of separation, McCutchen v. McCutchen, 360. N.C. 280 (2006), and that in actions for criminal conversation, the three year statute of limitations is tolled until discovery of the extramarital affair by the aggrieved party. Misenheimer v. Burris, 360 N.C. 620 (2006).

BILL ANALYSIS: The proposed committee substitute for House Bill 1110 would add a new section to Chapter 52 (Powers and Liabilities of Married Persons), to provide the following regarding the torts of alienation of affection and criminal conversation:

- The torts cannot arise from acts of a person that occur after the *plaintiff and plaintiff's spouse physically separate with the intent that the separation be permanent.* This is the change from H1110-CSST-64v.1, incorporating the change discussed in Committee.
- An action for either tort cannot be commenced more than three years from the last act of the defendant giving rise to the cause of action.
- A cause of action for either tort may be commenced only against a natural person.

EFFECTIVE DATE: October 1, 2009 and applies to actions filed on or after that date.

H1110-SMST-58(CSST-64) v1

Attachment 5

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1110 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.) McKissick
Sen.)

moves to amend the bill on page 1, line 11

( ) WHICH CHANGES THE TITLE

by by inserting the following between "intent" and "that" :

"of either the plaintiff or the plaintiff's spouse",

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

SENATE JUDICIARY I COMMITTEE
(Civil)

July 9, 2009
10:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Thursday, July 9, 2009, in Room 1027, at 10:00 a.m. in the Legislative Building. Senators present were Committee Chairman Martin Nesbitt, Vice-Chairman Pete Brunstetter, members; Senators Phil Berger, Dan Blue, Andrew Brock, Harry Brown, Floyd McKissick, David Rouzer, and Jerry Tillman; Staff Counsel Erika Churchill, Giles Perry, Susan Sitze and Bill Patterson; Committee Assistant Jan Lee

Chairman Nesbitt called the meeting to order and recognized Representative Bordsen to explain H.B. 1433 – Clarify Volunteer Immunity/AED. H.B. 1433 was displaced at the last meeting for some legislation to be worked out. Representative Bordsen said she felt that all problems had been worked out and she hoped the members would support the bill. A Proposed Committee Substitute for H.B. 1433 was distributed and a motion was made to adopt it for discussion. A motion was made by Senator Brock to give the PCS for H.B.1433 a favorable report and give the original bill an unfavorable report. The motion passed. Senator Purcell will handle the bill on the Senate Floor.

Chairman Nesbitt recognized Representative Holloway to explain H.B. 1255 – Sex Offenders/Permanent No Contact Order. A Proposed Committee Substitute for H.B. 1255 was distributed to members and adopted. Staff Counsel Susan Sitze explained the bill. Senator Tillman moved to give the PCS for H.B. 1255 a favorable report and unfavorable to the original bill and it received a unanimous vote. Senator Phil Berger will handle the bill on the Senate Floor.

Representative Holloway was recognized to explain H.B. 1256 – Larceny of a Motor Vehicle Part. A Proposed Committee Substitute for H.B. 1256 was distributed to the committee members and adopted for discussion. Representative Holloway explained the bill assisted by Susan Sitze. Senator Brunstetter moved to give the PCS for H.B. 1256 a favorable report and unfavorable to the original bill and it passed unanimously. Senator Brock will handle the bill on the Senate Floor.

Representative Tarleton was recognized to explain H.B. 334 – Revise NC Ski Statutes. A Proposed Committee Substitute was distributed to the committee members for discussion. Representative Tarleton explained the bill assisted by Giles Perry. Chad Donnahue of the North Carolina Skiers Association and Dick Taylor also spoke on the bill. After discussion by the committee members Senator Tillman moved to give the PCS for H.B. 334 a favorable report and unfavorable to the original bill and it passed unanimously. Senator Goss will handle the bill on the Senate Floor.

The meeting was adjourned.

Copies of H.B. 1433, PCS for H.B. 1433, Bill Analysis for H.B. 1433, HB 1255, PCS for H.B. 1255, Bill Analysis for H.B. 1255, H.B. 1256, PCS for H.B. 1256, Bill Analysis for PCS for H.B. 1256, H.B. 334, Bill Analysis for H.B. 334 are attached to these Amendments as Attachments 1,2,3,4,5,6,7,8,9,10 respectively.

Respectfully Submitted,

Senator Martin L. Nesbitt
Chairman

Janette W. Lee
Committee Assistant

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.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1433
Committee Substitute Favorable 5/4/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1433-CSRW-60 [v.1]

7/8/2009 3:35:49 PM

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 uses an automated external defibrillator (AED) 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:	Senate Judiciary I	**Date:**	July 8, 2009
Introduced by:	Reps. England, Bordsen	**Prepared by:**	Giles S. Perry
Analysis of:	PCS to Second Edition H1433-CSRW-60		Committee Counsel

SUMMARY: The proposed committee substitute (PCS) for House Bill 1433 clarifies the extension of liability coverage to a person who provides medical care in an emergency situation to include a person who use an automated external defibrillator (AED).

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 (PCS) 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.

H1433-SMRW-175(CSRW-60) v2

Susan Sitze and Theresa Matula of the Research Division contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1255
Second Edition Engrossed 5/14/09

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 or victim 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 court may grant one or more of the following forms of relief in a permanent no contact order under this Article:

(1) Order the defendant not to threaten, visit, assault, molest, or otherwise interfere with the victim.

(2) Order the defendant not to follow the victim, including at the victim's workplace.

(3) Order the defendant not to harass the victim.

(4) Order the defendant not to abuse or injure the victim.

(5) Order the defendant not to contact the victim by telephone, written communication, or electronic means.

(6) Order the defendant to refrain from entering or remaining present at the victim's residence, school, place of employment, or other specified places at times when the victim is present.

(7) Order other relief deemed necessary and appropriate by the court.

(g) A permanent no contact order entered pursuant to this Article shall be enforced by all North Carolina law enforcement agencies without further order of the court. 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 permanent no contact order. A person who knowingly violates a permanent no contact order is guilty of a Class A1 misdemeanor.

(h) 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.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1255
Second Edition Engrossed 5/14/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1255-CSSA-61 [v.2]

7/6/2009 7:54:28 PM

Short Title: Sex Offenders/Permanent No Contact Order. (Public)

Sponsors:

Referred to:

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 victim shall have a right to be heard at the show cause hearing.

(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 court may grant one or more of the following forms of relief in a permanent no contact order under this Article:

(1) Order the defendant not to threaten, visit, assault, molest, or otherwise interfere with the victim.

(2) Order the defendant not to follow the victim, including at the victim's workplace.

(3) Order the defendant not to harass the victim.

(4) Order the defendant not to abuse or injure the victim.

(5) Order the defendant not to contact the victim by telephone, written communication, or electronic means.

(6) Order the defendant to refrain from entering or remaining present at the victim's residence, school, place of employment, or other specified places at times when the victim is present.

(7) Order other relief deemed necessary and appropriate by the court.

(g) A permanent no contact order entered pursuant to this Article shall be enforced by all North Carolina law enforcement agencies without further order of the court. A law enforcement officer shall arrest and take a person into custody, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated a permanent no contact order. A person who knowingly violates a permanent no contact order is guilty of a Class A1 misdemeanor.

(h) At any time after the issuance of the order, the State, at the request of the victim, or the defendant may make a motion to rescind the permanent no contact order. If the court determines that reasonable grounds for the victim to fear any future contact with the defendant no longer exist, the court may rescind the permanent no contact order.

(i) 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:	Senate Judiciary I	**Date:**	July 6, 2009
Introduced by:	Reps. Holloway, Wiley, Underhill, Parmon	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to Second Edition H1255-CSSA-61		

SUMMARY: ***The proposed committee substitute (PCS) for 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 victim shall have the right to be heard at the show cause hearing. 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 bill provides a list of the types of relief the court may grant in the order. Law enforcement shall enforce the permanent no contact order without further order of the court and shall arrest without a warrant if there is probable cause to believe the person has knowingly violated the order. Violation of the order is a Class A1 misdemeanor.

At any time after the issuance of the order, the State, at the request of the victim, or the defendant may make a motion to rescind the permanent no contact order. If the court determines that reasonable grounds for the victim to fear any future contact with the defendant no longer exist, the court may rescind the permanent no contact order.

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.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 1256
Committee Substitute Favorable 5/12/09
Third Edition Engrossed 5/13/09

Short Title: Larceny of a Motor Vehicle Part. (Public)

Sponsors:

Referred to:

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 may 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.

SECTION 2. 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 1256
Committee Substitute Favorable 5/12/09
Third Edition Engrossed 5/13/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1256-CSSA-60 [v.4]

7/6/2009 7:35:50 PM

Short Title: Larceny of a Motor Vehicle Part. (Public)

Sponsors:

Referred to:

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. Felony larceny of motor vehicle parts.**

Unless the conduct is covered under some other provision of law providing greater punishment, larceny of a motor vehicle part is a Class I felony if the cost of repairing the motor vehicle is one thousand dollars ($1,000) or more.

For purposes of this section, the cost of repairing a motor vehicle means the cost of any replacement part and any additional costs necessary to install the replacement part in the motor vehicle.

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:	Senate Judiciary I	**Date:**	July 6, 2009
Introduced by:	Reps. Holloway, Tillis, Braxton	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to Third Edition H1256-CSSA-60		

SUMMARY: ***The proposed committee substitute (PCS) for House Bill 1256 would create a Class I felony for larceny of a motor vehicle part if the cost of repairing the motor vehicle is $1,000 or more.***

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: The PCS for House Bill 1256 would create a Class I felony for larceny of a motor vehicle part, if the cost of repairing the motor vehicle is $1,000 or more. The cost of repairing the motor vehicle means the cost of replacement parts and any additional costs necessary to install the replacement parts in the motor vehicle.

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

H1256-SMSA-119(CSSA-60) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 334
Committee Substitute Favorable 5/5/09

Short Title: Revise NC Ski Safety Statutes. (Public)

Sponsors:

Referred to:

March 2, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE SKIER SAFETY STATUTES TO CLARIFY THE RESPECTIVE DUTIES OF SKI AREA OPERATORS AND SKIERS AND TO MAKE OTHER RELATED CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 99C of the General Statutes reads as rewritten:

"Chapter 99C.

"Actions Relating to ~~Skier~~ ~~Safety and Skiing Accidents.~~ Winter Sports Safety and Accidents.

"§ 99C-1. Definitions.

When used in this Chapter, unless the context otherwise requires:

(1) ~~"Competitor" means~~Competitor. – ~~a~~ A skier actually engaged in competition or in practice therefor with the permission of the ski area operator on any slope or trail or portion thereof designated by the ski area operator for the purpose of competition.

(2) ~~"Passenger" means~~Passenger. – ~~any~~ Any person who is being transported or is awaiting transportation, or being conveyed on a passenger tramway or is moving from the disembarkation point of a passenger tramway or is in the act of embarking upon or disembarking from a passenger tramway.

(3) ~~"Passenger Tramway" shall mean~~Passenger tramway. – ~~any~~ Any device used to transport passengers uphill on skis or other winter sports devices, or in cars on tracks, or suspended in the air, by the use of steel cables, chains, belts or ropes. Such definition shall include such devices as a chair lift, J Bar, or platter pull, rope tow, and wire tow.

(4) ~~"Ski Area" means~~Ski area. – ~~all the ski~~All winter sports slopes, ~~ski~~ alpine and Nordic ski trails, freestyle terrain and passenger tramways, that are administered or operated as a ski area enterprise within this State.

(5) ~~"Ski Area Operator" means~~Ski area operator. – ~~a~~ A person, corporation, or organization that is responsible for the safe operation and maintenance of the ski area.

(6) ~~"Skier" means~~Skier. – ~~any~~ Any person who is wearing skis or other winter sports devices or any person who for the purpose of skiing or other winter sports is on a designated and clearly marked ~~ski slope~~winter sports slope, ~~or ski~~alpine or Nordic ski trail or freestyle terrain that is located at a ski area, or any person who is a passenger or spectator at a ski area.

(7) Winter sports. – Any use of skis, snowboards, snowshoes, or any other device for skiing, sliding, jumping, or traveling on snow or ice.

(8) Freestyle terrain. – Constructed and natural features in ski areas intended for winter sports including, but not limited to, terrain parks and terrain park features such as jumps, rails, fun boxes, half-pipes, quarter-pipes, and freestyle-bump terrain.

"§ 99C-2. Duties of ski area operators and skiers.

(a) A ski area operator shall be responsible for the maintenance and safe operation of any passenger tramway in his ski area and insure that such is in conformity with the rules and regulations prescribed and adopted by the North Carolina Department of Labor pursuant to G.S. 95-120(1) as such appear in the North Carolina Administrative Procedures Act. The North Carolina Department of Labor shall conduct certifications and inspections of passenger tramways.

A ski area operator's responsibility regarding passenger tramways shall include, but is not limited to, insuring operating personnel are adequately trained and are adequate in number; meeting all standards set forth for terminals, stations, line structures, and line equipment; meeting all rules and regulations regarding the safe operation and maintenance of all passenger lifts and tramways, including all necessary inspections and record keeping.

(b) ~~A skier and/or a passenger~~A skier shall have the following responsibilities:

(1) To know the range of ~~his own~~the skier's abilities to negotiate any ski slope or trail and to ski within the limits of such ability;

(2) To maintain control of ~~his~~ the skier's speed and course at all times when skiing and to maintain a proper lookout so as to be able to avoid other skiers and ~~visible objects;~~obvious hazards and inherent risks, including variations in terrain, snow, or ice conditions, bare spots and rocks, trees and other forms of forest growth or forest debris;

(3) To stay clear of snow grooming equipment, all vehicles, pole lines, lift towers, signs, snowmaking equipment, and any other equipment on the ski slopes and trails;

(4) To heed all posted information and other warnings and to refrain from acting in a manner which may cause or contribute to the injury of the skier or others;

(5) To wear retention straps, ski brakes, or other devices to prevent runaway skis or snowboards;

(6) Before beginning to ski from a stationary position or before entering a ski slope or trail from the side, to avoid moving skiers already on the ski slope or trail;

(7) To not move uphill on any passenger tramway or use any ski slope or trail while such person's ability to do so is impaired by the consumption of alcohol or by the use of any narcotic or other drug or while such person is under the influence of alcohol or any narcotic or any drug;

(8) If involved in a collision with another skier or person, to not leave the vicinity of the collision before giving his name and current address to an employee of the ski area operator, a member of the ski patrol, or the other skier or person with whom the skier collided, except in those cases when medical treatment is required; in which case, said information shall be provided as soon as practical after the medical treatment has been obtained. If the other person involved in the collision is unknown, the skier shall leave the personal identification required by this subsection with the ski area operator;

(9) Not to embark upon or disembark from a passenger tramway except at an area that is designated for such purpose;

(10) Not to throw or expel any object from a passenger tramway;

(11) Not to perform any action that interferes with the operation or running of a passenger tramway;

(12) Not to use such tramway unless ~~he~~ the skier has the ability to use it with reasonable safety;

(13) Not to engage willfully or negligently in any type conduct that contributes to or causes injury to another person or his properties;

(14) Not to embark upon a passenger tramway without the authority of the ski area ~~operator.~~operator;

(15) If using freestyle terrain, to know the range of the skier's abilities to negotiate the terrain and to avoid conditions and obstacles beyond the limits of such ability that a visible inspection should have revealed.

(c) A ski area operator shall have the following responsibilities:

(1) To mark all trails and maintenance vehicles and to furnish such vehicles with flashing or rotating lights that shall be in operation whenever the vehicles are working or moving in the ski area;

(2) To mark with a visible sign or other warning implement the location of any hydrant or similar equipment that is used in snowmaking operations and located anywhere in the ski area;

(3) To indicate the relative degree of difficulty of a slope or trail by appropriate signs. Such signs are to be prominently displayed at the base of a slope where skiers embark on a passenger tramway serving the slope or trail, or at the top of a slope or trail. The signs must be of the type that have been approved by the National Ski Areas Association and are in current use by the industry;

(4) To post at or near the top of or entrance to, any designated slope or trail, signs giving reasonable notice of unusual conditions on the slope or trail;

(5) To provide adequate ski patrols;

(6) To mark clearly any hidden rock, hidden stump, or any other hidden hazard known by the ski area operator to exist;

(7) To inspect the winter sports slopes, alpine and Nordic ski trails, and freestyle terrains that are open to the public at least twice daily and maintain a log recording: (i) the time of the inspection and the name of the inspector(s); and (ii) the general surface conditions, based on industry standards, for the entire ski area at the time of the inspections;

(8) To post, in a conspicuous manner, the general surface conditions for the entire ski area twice daily; and

~~(7)~~(9) Not to engage willfully or negligently in any type conduct that contributes to or causes injury to another person or his properties.

"§ 99C-3. Violation constitutes negligence.

A violation of any responsibility placed on the skier, passenger or ski area operator as set forth in G.S. 99C-2, to the extent such violation proximately causes injury to any person or damage to any property, shall constitute negligence on the part of the person violating the provisions of that section.

"§ 99C-4. Competition.

The ski area operator shall, prior to the beginning of a competition, allow each competitor a reasonable visual inspection of the course or area where the competition is to be held. The competitor shall be held to assume risk of all course conditions including, but not limited to, weather and snow conditions, course construction or layout, and obstacles which a visual inspection should have revealed. No liability shall attach to a ski area operator for injury or death of any competitor proximately caused by such assumed risk.

"§ 99C-5. Operation of passenger tramway.

The operation of a passenger tramway shall not constitute the operation of a common carrier."

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

HOUSE BILL 334:
Revise NC Ski Safety Statutes

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	July 8, 2009
Introduced by:	Reps. Tarleton, Goforth, Frye, Rapp	**Prepared by:**	Giles S. Perry
Analysis of:	Second Edition		Committee Counsel

SUMMARY: House Bill 334 amends the State's statutes concerning ski area safety.

CURRENT LAW: Chapter 99C of the General Statutes, enacted in 1981, imposes certain duties upon ski area operators and skiers, and provides that violation of those duties constitutes negligence, if it proximately causes injury to any person or damage to any property. Currently, Chapter 99C does not specifically address activities such as snowboarding or the use of terrain modified by the addition of jumps, rails, half pipes, bumps and other features resulting in so-called "freestyle terrain."

BILL ANALYSIS: House Bill 334 makes the following changes to the current law:

- changes the definition of "passenger tramway" to include devices used to transport "other winter sports devices."
- changes the definition of "ski area" to include "winter sports" slopes, "alpine and Nordic ski trails," and "freestyle terrain."
- changes the definition of "skier" to include persons wearing "other winter sports devices," and persons on "winter sports slopes," "alpine or Nordic ski trails," or "freestyle terrain." for the purpose of participating in "other winter sports."
- adds a definition of "winter sports" as "any use of skis, snowboards, snowshoes, or any other device for skiing, sliding, jumping, or traveling on snow or ice."
- adds a definition of "freestyle terrain" as "constructed and natural features in ski areas intended for winter sports including, but not limited to, terrain parks and terrain park features such as jumps, rails, fun boxes, half pipes, quarter pipes, and freestyle bump terrain."
- changes the duties of skiers to require skiers to keep a proper lookout to avoid "obvious hazards and inherent risks, including variations in terrain, snow, or ice conditions, bare spots and rocks, trees and other forms of forest growth or forest debris," to stay clear of pole lines and snowmaking equipment, to wear retention straps if on a snowboard, and, if using freestyle terrain, "to know the range of the skier's abilities to negotiate the terrain and to avoid conditions and obstacles beyond the limits of such ability that a visible inspection should have revealed."
- changes the duties of ski area operators to inspect and record the condition of the winter sports slopes, alpine and Nordic ski trails, and freestyle terrains that are open to the public, and to post the general surface conditions for the entire ski area, twice daily.

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

Bill Patterson of the Research Division substantially contributed to this summary.

H334-SMRW-176(e2) v1

SENATE JUDICIARY I COMMITTEE
(Civil)

July 21, 2009
10:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Tuesday, July 21, 2009, at 10:00 a.m. in Room 1027 of the Legislative Building. Senators present were Committee Chairman Senator Martin L. Nesbitt, Vice-Chairmen Dan Clodfelter, Pete Brunstetter, Josh Stein, Phil Berger, Dan Blue, Harry Brown, Andrew Brock, Debbie Clary, Ellie Kinnaird, David Hoyle, Clark Jenkins, Floyd McKissick, David Rouzer, Josh Stein and Jerry Tillman; Staff Counsel Erika Churchill, and Susan Sitze; Committee Assistant Jan Lee and Jessica Bennett.

Chairman Nesbitt called the meeting to order and recognized the pages.

Representative Glazier was recognized to explain H.B. 104 – LEC Term Changes/Ethics Training. A Proposed Committee Substitute for H.B. 104 was distributed and adopted for discussion by motion of Senator Stein. Representative Glazier explained the bill and the reason for the PCS assisted by Staff Counsel Erika Churchill. There was extensive discussion and questions. Gerry Cohen assisted in answering questions and explanation. Gene Sanders with the Fiscal Research Division explained the confidentiality of Fiscal Notes. An amendment was offered and the bill was displaced to finish drafting the amendment.

Representative Glazier was recognized to explain H.B. 1135 – Qui Tam/Liability for False Claims. Representative Glazier explained the bill. Charlie Hobgood from the Attorney General's office spoke on the bill and explained the good that will come from this bill being passed. After extensive discussion and questions Chairman Nesbitt displaced the bill and appointed a subcommittee to work on the bill. The subcommittee consisted of Senator Stein, Senator Blue, Senator Brunstetter, Senator McKissick and Senator Kinnaird.

Chairman Nesbitt asked if PCS for H.B. 104 was ready and recognized Jan Pinsky to speak on the bill. After her remarks Chairman Nesbitt displaced the bill to integrate an amendment.

The meeting was adjourned at 11:00 a.m.

Copies of H.B. 104, Senate PCS for H.B. 104, Bill Analysis for PCS for H.B. 104, H.B. 1135, Bill Analysis for H.B. 1135 are attached to these Minutes as Attachments l, 2, 3, 4, 5 respectively.

Respectfully Submitted,

Senator Martin L. Nesbitt
Chairman

Janette W. Lee
Committee Assistant

AGENDA

Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Pete Brunstetter, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman
Senator Josh Stein, Vice Chairman

Tuesday, July 21, 2009, 10:00 AM
1027 LB

Welcome and Opening Remarks

Introduction of Pages

Bills

	HB 104	LEC Term Changes/Ethics Training.	Representative Lucas Representative Stam Representative Glazier Representative McGee
	HB 1135	Qui Tam/Liability for False Claims.	Representative Martin Representative Ross Representative Hall Representative Glazier

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 104*
Committee Substitute Favorable 2/26/09

Short Title: LEC Term Changes/Ethics Training. (Public)

Sponsors:

Referred to:

February 11, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR FOUR-YEAR STAGGERED TERMS OF OFFICE FOR MEMBERS OF THE LEGISLATIVE ETHICS COMMITTEE AND TO AMEND THE TIMING OF ETHICS TRAINING FOR LEGISLATORS AS RECOMMENDED BY THE LEGISLATIVE ETHICS COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-99 reads as rewritten:

"**§ 120-99. Creation; composition.**

(a) The Legislative Ethics Committee is created and shall consist of 12 members, six Senators appointed by the President Pro Tempore of the Senate, ~~among them three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader,~~ and six members of the House of Representatives appointed by the Speaker of the ~~House, among them three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader.~~ House. The President Pro Tempore of the Senate shall appoint three members from a list of nominees submitted by the majority leader of the Senate and three members from a list of nominees submitted by the minority leader of the Senate. The Speaker of the House shall appoint three members from a list of nominees submitted by the majority leader of the House and three members from a list of nominees submitted by the minority leader of the House. The nominating majority or minority leader shall submit to the person making the appointment a list of twice the number of vacancies on the Committee that are to be filled from that leader's nominees.

(b) The President Pro Tempore of the Senate and the Speaker of the House as the appointing officers shall each designate a cochair of the Legislative Ethics Committee from the respective officer's ~~appointees.~~appointees to serve as cochair for the current General Assembly, and until the cochair's successor is designated. The cochair appointed by the President Pro Tempore of the Senate shall preside over the Legislative Ethics Committee during the odd-numbered year, and the cochair appointed by the Speaker of the House shall preside in the even-numbered year. ~~However, a~~ A cochair may preside at anytime during the absence of the presiding cochair or upon the presiding cochair's designation. In the event a cochair is unable to act as cochair on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the respective officer shall designate from that officer's appointees a member to serve as cochair for that specific matter.

(c) Repealed by Session Laws 2006-201, s. 8, effective January 1, 2007.

(d) The appointments of the President Pro Tempore of the Senate and the Speaker of the House shall ensure that the composition of the Legislative Ethics Committee is bipartisan in equal numbers."

SECTION 2. G.S. 120-100 reads as rewritten:

"**§ 120-100. Term of office; vacancies.**

(a) Appointments to the Legislative Ethics Committee shall be made immediately after the convening of the regular session of the General Assembly in odd-numbered ~~years, and appointees shall serve until the expiration of their then-current terms as members of the General Assembly.~~years. The term of office for members of the Legislative Ethics Committee shall be four years from the date of the convening of the General Assembly in which the member is appointed to the Committee. Members shall not serve two consecutive full terms.

(b) A vacancy occurs on the Legislative Ethics Committee when a member resigns or is no longer a member of the General Assembly. A vacancy occurring for any reason during a term shall be filled for the unexpired term by the authority making the appointment which caused the vacancy, and the person appointed to fill the vacancy shall, if possible, be a member of the same political party as the member who caused the ~~vacancy.~~vacancy, from a list of two nominees submitted by that party's leader.

(c) In the event a member of the Legislative Ethics Committee is unable to act on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the appointing officer may appoint another member of the respective chamber from a list of two members submitted by the majority leader or minority leader who nominated the member who is unable to act on the matter to serve as a member of the Legislative Ethics Committee for the specific matter only. If on any specific matter, the number of members of the Legislative Ethics Committee who are unable to act on a specific matter exceeds four members, the appropriate appointing officer shall appoint other members of the General Assembly to serve as members of the Legislative Ethics Committee for that specific matter only."

SECTION 3. Notwithstanding G.S. 120-100(a) as amended in Section 2 of this act, legislators appointed as members of the Legislative Ethics Committee for the 2009 General Assembly shall serve initial terms as follows:

(1) Two senators appointed by the President Pro Tempore of the Senate upon the recommendation of the minority leader of the Senate and one senator appointed by the President Pro Tempore of the Senate upon the recommendation of the majority leader of the Senate shall be designated by the President Pro Tempore as having a term of two years. Two senators appointed by the President Pro Tempore of the Senate upon the recommendation of the majority leader of the Senate and one senator appointed by the President Pro Tempore of the Senate upon the recommendation of the minority leader of the Senate shall be designated by the President Pro Tempore as having a term of four years.

(2) Two representatives appointed by the Speaker of the House upon the recommendation of the minority leader of the House and one representative appointed by the Speaker of the House upon the recommendation of the majority leader of the House shall be designated by the Speaker as having a term of two years. Two representatives appointed by the Speaker of the House upon the recommendation of the majority leader of the House and one representative appointed by the Speaker of the House upon the recommendation of the minority leader of the House shall be designated by the Speaker as having a term of four years.

SECTION 4. G.S. 138A-14(c) reads as rewritten:

"(c) The Commission, jointly with the Committee, shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment, or employment and shall offer periodic refresher presentations as the Commission and the Committee deem appropriate. Every legislator ~~and legislative employee~~

shall participate in an ethics presentation approved by the Commission and Committee within ~~three~~ two months of either the convening of the General Assembly to which the legislator is elected or within two months of the legislator's appointment, whichever is later. ~~legislative employee's election, reelection, appointment, or~~Every legislative employee shall participate in an ethics presentation approved by the Commission and Committee within three months of employment, and ~~every legislative employee~~ shall attend refresher ethics education presentations at least every two years thereafter, in a manner as the Commission and Committee deem appropriate."

SECTION 5. This act is effective when it becomes law

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 104*
Committee Substitute Favorable 2/26/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H104-CSRC-40 [v.8]

6/24/2009 5:53:15 PM

Short Title: Clarify Legislative Confidentiality. (Public)

Sponsors:

Referred to:

February 11, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY LEGISLATIVE CONFIDENTIALITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 17 of Chapter 120, as amended by S.L. 2009-129, reads as rewritten:

"Article 17.
Confidentiality of Legislative Communications.

"§ 120-129. Definitions.

As used in this Article:

(1) "Document" means all records, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material regardless of physical form or characteristics.

(1a) "Legislative commission" means any commission or committee which the Legislative Services Commission is directed or authorized to staff by law or resolution and which it does, in fact, staff.

(2) "Legislative employee" means employees and officers of the General Assembly, consultants and counsel to members and committees of either house of the General Assembly or of legislative commissions who are paid by State funds, students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Services Commission, and employees of the School of Government at the University of North Carolina at Chapel Hill; but does not mean legislators and members of the Council of State.

(3) "Legislator" means a member-elect, member-designate, or member of the North Carolina Senate or House of Representatives.

"§ 120-130. Drafting and information requests to legislative ~~employees.~~employees; constituent inquiries.

(a) A drafting request made to a legislative employee from a legislator is confidential. Neither the identity of the legislator making the request nor, except to the extent necessary to answer the request, the existence of the request may be revealed to any person who is not a legislative employee without the consent of the legislator.

(b) An information request made to a legislative employee from a legislator is confidential. Neither the identity of the legislator making the request nor, except to the extent necessary to answer the request, the existence of the request may be revealed to any person who is not a legislative employee without the consent of the legislator. Notwithstanding the preceding sentences of this subsection, the periodic publication by the Fiscal Research Division of the Legislative Services Office of a list of information requests is not prohibited, if the identity of the legislator making the request is not revealed.

(c) ~~Any~~ Documents submitted to a legislator by another person, or any supporting documents submitted ~~or caused to be submitted~~ to a legislative employee by a legislator in connection with a drafting or information request are confidential. Except to the extent necessary to answer the request, neither the document nor copies of it, nor the identity of the person, firm, or association producing it, may be provided to any person who is not a legislative employee without the consent of the legislator.

(d) Drafting requests, ~~or~~ information ~~requests or~~ requests, and ~~supporting~~ documents submitted under subsection (c) of this section are not "public records" as defined by G.S. 132-1. A document that is a public record shall continue to be treated as a public record notwithstanding its inclusion as a supporting document to a drafting or information request.

"§ 120-131. Documents produced by legislative employees.

(a) Documents prepared by legislative employees upon the request of legislators are confidential. Except as provided in subsection (b) of this section, the existence of the document may not be revealed nor may a copy of the document be provided to any person who is not a legislative employee without the consent of the legislator.

(b) A document prepared by a legislative employee upon the request of a legislator becomes available to the public when the document is a:

(1) Bill or resolution and it has been introduced;

(2) Proposed amendment or committee substitute for a bill or resolution and it has been offered at a committee meeting or on the floor of a house;

(3) Proposed conference committee report and it has been offered at a joint meeting of the conference committees; or

(4) Bill, resolution, memorandum, written analysis, letter, or other document resulting from a drafting or information request and it has been distributed at a legislative commission or standing committee or subcommittee meeting not held in executive session, closed session, or on the floor of a house.

(b1) A document prepared by a legislative employee upon the request of any legislator, that pursuant to this Article does not become available to the public, is not a "public record," as defined by G.S. 132-1.

(c) This section does not prohibit the dissemination of information or language contained in any document which has been prepared by a legislative employee in response to a substantially similar request from another legislator, provided that the identity of the requesting legislator and the fact that he had made such a request not be divulged.

"§ 120-131.1. Requests from legislative employees for ~~assistance in the preparation of fiscal notes and evaluation reports.~~assistance.

(a) A request, including any ~~accompanying~~ supporting documents, made to an agency employee by a legislative employee of the Fiscal Research Division for assistance in the preparation of a fiscal note is confidential. An agency employee who receives such a request or who learns of such a request made to another agency employee ~~of his or her agency~~ shall reveal the existence of the request only to other agency employees of the agency to the extent that it is necessary to respond to the request, and to the agency employee's supervisor and to the Office of State Budget and Management. All documents prepared by the agency employee in response to the request of the Fiscal Research Division are also confidential and shall be kept confidential in the same manner as the original request, except that documents submitted to the

Fiscal Research Division in response to the request cease to be confidential under this section when the Fiscal Research Division releases a fiscal note based on the documents.

(a1) A request, and any ~~accompanying~~ supporting documents, made to an agency employee by a legislative employee of the Program Evaluation Division for assistance in the preparation of an evaluation report is confidential. The request and any ~~accompanying~~ supporting documents are not "public records" as defined by G.S. 132-1. An agency employee who receives a request under this subsection or who learns of such a request made to another agency employee ~~of his or her agency~~ may reveal the existence of the request to other agency employees to the extent that it is necessary to respond to the request and to the agency employee's supervisor. All documents prepared by the agency employee in response to the request of a legislative employee of the Program Evaluation Division are confidential, shall be kept confidential in the same manner as the original request, and are not "public records" as defined in G.S. 132-1.

(a2) A request, and any supporting documents, made to an agency employee by a legislative employee pursuant to G.S. 120-130 or G.S. 120-131, is confidential. An agency employee who receives such a request or who learns of such a request made to another agency employee shall reveal the existence of the request only to other agency employees of the agency to the extent that it is necessary to respond to the request, and to the agency employee's supervisor. All documents prepared by the agency employee in response to the request of a legislative employee under this subsection are also confidential and shall be kept confidential in the same manner as the original request. The request, any supporting documents to the request and any documents prepared by the agency employee in response to a request under this subsection are not "public records" as defined by G.S. 132-1.

(a3) Requests and documents confidential under this section shall bear an indication on the face of the request or document that the request or document is confidential and not a public record pursuant to the section.

(b) As used in this section, "agency employee" means an employee or officer of every agency of North Carolina government or its subdivisions, including every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district, or other political subdivision of government.

(c) Violation of this section ~~may be grounds for disciplinary action.~~shall be subject to penalties as set forth in G.S. 120-134.

"§ 120-132. Testimony by legislative employees.

(a) Except as provided in subsections (b) and (c) of this section, ~~No~~ no present or former legislative ~~employees~~ employee may ~~be required to~~ disclose any information that the individual, while employed or retained by the State, may have acquired:

(1) In a standing, select, or conference committee or subcommittee of either house of the General Assembly or a legislative commission;

(2) On the floor of either house of the General Assembly, ~~or~~ in any office of a ~~legislator;~~ legislator, or at any other location of the State legislative buildings and grounds as defined in G.S. 120-32.1(d);

(3) As a result of communications that are confidential under G.S. 120-130 and G.S. 120-131.

(b) A present or former legislative employee may disclose information acquired under subsection (a) of this section that would be reflected in the official public record or was otherwise publicly disseminated.

(c) ~~Notwithstanding the provisions of the preceding sentence,~~ Subject to G.S. 120-9, 120-133, and the common law of legislative immunity, the presiding judge ~~of a court of competent jurisdiction~~ may compel ~~that disclosure,~~ disclosure of information acquired under

subsection (a) of this section if in ~~his~~ the judge's opinion, the ~~same~~ disclosure is necessary to a proper administration of justice.

"§ 120-133. Redistricting communications.

Notwithstanding any other provision of law, all drafting and information requests to legislative employees and documents prepared by legislative employees for legislators concerning redistricting the North Carolina General Assembly or the Congressional Districts are no longer confidential and become public records upon the act establishing the relevant district plan becoming law. Present and former legislative employees may be required to disclose information otherwise protected by G.S. 120-132 concerning redistricting the North Carolina General Assembly or the Congressional Districts upon the act establishing the relevant district plan becoming law.

"§ 120-134. Penalty.

Violation of any provision of this Article shall be grounds for disciplinary action in the case of current legislative employees, ~~for referral to the academic institution for appropriate discipline in the case of law student externs,~~ and for removal from office in the case of public officers. Violation of any provisions of this Article by a current legislative employee who is a law student extern shall be referred to the academic institution for appropriate discipline and the Legislative Services Commission may terminate the externship. Any other person who willfully violates any provision of this Article shall be guilty of a Class 3 misdemeanor. No other criminal penalty shall attach for any violation of this Article.

"§ 120-135. Additional restrictions on sharing confidential information.

Legislative employees hired by the Legislative Services Commission may not disclose confidential drafting and information requests under G.S. 120-130 or documents that are not made available to the public under G.S. 120-131 with a legislative employee not hired by the Legislative Services Commission unless specifically authorized to do so by the legislator who made the request or on whose behalf the legislative employee prepared the document."

SECTION 2. If House Bill 1134 of the 2009 General Assembly becomes law, G.S. 114-51(d) as enacted by House Bill 1134 of the 2009 General Assembly reads as rewritten:

"(d) This section shall not apply to the Judicial ~~Department.~~Department or the General Assembly. A member of the General Assembly may request the assistance of the Open Government Unit to assist with mediating a public records request."

SECTION 3. This act is effective when it becomes law except that the amendments to G.S. 120-134 in Section 1 of this act become effective December 1, 2009 and apply to offenses committed on or after that date.

HOUSE BILL 104:
Clarify Legislative Confidentiality

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	July 20, 2009
Introduced by:	Reps. Glazier, Lucas, Stam, McGee	**Prepared by:**	R. Erika Churchill Committee Counsel
Analysis of:	PCS to Second Edition H104-CSRC-40		

SUMMARY: ***The proposed committee substitute for House Bill 104 would make clarifying and substantive changes to Article 17 of Chapter 120 related to legislative confidentiality and also makes it clear that the Article does not abrogate the ability of a legislator to invoke legislative immunity if a legislative employee is being required to testify as to protected information.***

[As introduced, House Bill 104 was identical to Senate Bill 136, introduced by Sen. Clodfelter, which was signed by the Governor and has been chaptered as S.L. 2009-10.]

CURRENT LAW: Article 17 of Chapter 120 provides that drafting[1] and information[2] requests made by legislators to legislative employees are confidential, as are all supporting documents[3] the legislator submits or causes to be submitted to a legislative employee in connection with the drafting or information request. Drafting and information requests, including supporting documents are not "public records".[4] Legislative employees may not even acknowledge the existence of a request to any person who is not another legislative employee without the consent of the legislator.

Documents produced by a legislative employee in response to drafting and information requests are confidential.[5] Those documents become "available to the public" in only the following instances:

- When the document is introduced as a bill or resolution.
- When the document is a proposed as an amendment or committee substitute offered on the floor of a chamber or in a committee meeting.
- When the document is offered as a conference report at a joint meeting of the conference committee.
- When the document has been distributed on the floor of a chamber or at a committee or commission meeting not held in closed session.[6]

Requests by the Fiscal Research Division for assistance on the preparation of fiscal notes are confidential and the employees in another agency may not disclose the existence of the request or any documents created in response to the request unless and until the fiscal note is released.[7] Similar provisions apply to requests for assistance made by the Program Evaluation Division.[8]

No present or former legislative employee may be required to disclose any information obtained in a legislative committee or commission meeting, on the floor of either chamber, in any office of a

[1] G.S. 120-130(a).
[2] G.S. 120-130(b).
[3] G.S. 120-130(c).
[4] G.S. 120-130(d).
[5] G.S. 120-131(a).
[6] G.S. 120-131(b).
[7] G.S. 120-131.1(a).
[8] G.S. 120-131.1(b)

legislator, or as a result of communications that are confidential because they are information or drafting requests. [9] However, a court may compel disclosure "if in his opinion, the same if necessary to a proper administration of justice.[10] A violation of the Article "shall be grounds for disciplinary action in the case of employees" and removal from office in the case of public officers, but there are no criminal penalties.[11]

The common law doctrine of legislative immunity protects legislators from being compelled to testify as to their legislative acts.[12] This doctrine is reflected in G.S. 120-9 which provides that: "[t]he members shall have freedom of speech and debate in the General Assembly, and shall not be liable to impeachment or question, in any court or place out of the General Assembly, for words therein spoken." There are no North Carolina cases interpreting or applying legislative immunity, but other courts have held that it extends to legislative employees participating in the legislative process.

BILL ANALYSIS:

Section 1 of the bill would amend a variety of sections in Article 17 of Chapter 120. The changes in each section are outlined below.

§ 120-130 is amended to provide that documents submitted to a legislator from a constituent are confidential and are not public records.

There are no substantive changes to **§ 120-131** related to the confidentiality of documents produced by legislative employees at the request of legislators.

The changes in **§ 120-131.1** add two new subsections that would make information and drafting requests made by a legislative employee to an employee in another agency confidential. The request, any documents submitted or created as a result of the request would not be considered public records. All requests made under G.S. 120-131.1 (requests for fiscal notes, assistance with program evaluations and research and drafting requests) would have to be marked "confidential" and that the document is not a public record.

§ 120-132 is amended to prohibit a legislative employee from disclosing confidential information and to make it clear that a court's authority to compel the testimony of a legislative employee regarding confidential communications or matters related to the legislative process if the matter is limited by North Carolina's speech and debate clause, the common law of legislative immunity and **§G.S. 120-133** related to the confidentiality of redistricting communications.

§ 120-134 is amended to provide that it would be a Class 2 misdemeanor for a person who is not currently a legislative employee to breach legislative confidentiality.

A new section, **§ 120-135** is created to prohibit members of central staff from sharing confidential communications with other legislative employees who are not on central staff unless specifically authorized to do so by the legislator who holds the confidentiality.[13]

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[9] G.S. 120-132.

[10] Id., but see G.S. 120-133 which makes all drafting and information requests and all documents prepared by legislative employees concerning redistricting public records "upon the act establishing the relevant district plan becoming law.

[11] G.S. 120-134.

[12] For an in depth discussion of legislative immunity, See "Legislative Immunity in Minnesota", Peter S. Wattson, Senate Counsel, State of Minnesota, updated July 9, 2008.

[13] The punishment for a Class 2 misdemeanor for a person with no prior convictions is 1-30 days of community service and/or a fine of not more than $1000.

Section 2 provides that if HB 1134 (which creates an open government section in the Department of Justice) becomes law, a member may request the assistance of that agency to mediate a public records request that would require the expenditure of significant State resources in order to respond.

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

BACKGROUND: This proposed committee substitute is a recommendation of the Legislative Ethics Committee, a joint committee of the Senate and House of Representatives.

H104-SMST-63(CSRC-40) v3

Kory Goldsmith substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 4

HOUSE BILL 1135
Committee Substitute Favorable 6/3/09
Committee Substitute #2 Favorable 6/25/09
Fourth Edition Engrossed 6/29/09

Short Title: Qui Tam/Liability for False Claims. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO DETER AND PUNISH PERSONS WHO MAKE FALSE OR FRAUDULENT CLAIMS FOR PAYMENT BY THE STATE AND TO PROVIDE REMEDIES IN THE FORM OF TREBLE DAMAGES AND CIVIL PENALTIES WHEN MONEY IS OBTAINED FROM THE STATE BY REASON OF SUCH CLAIMS.

The General Assembly of North Carolina enacts:

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

"Article 52.
"False Claims Act.

"**§ 1-605. Short title; purpose.**

(a) This Article shall be known and may be cited as the False Claims Act.

(b) The purpose of this Article is to deter persons from knowingly causing or assisting in causing the State to pay claims that are false or fraudulent, and to provide remedies in the form of treble damages and civil penalties when money is obtained from the State by reason of a false or fraudulent claim.

"**§ 1-606. Definitions.**

The following words and phrases when used in this act have the following meanings, unless the context clearly indicates otherwise:

(1) "Attorney General." – The Attorney General of North Carolina, or any deputy, assistant, or associate attorney general.

(2) "Claim." – Any request or demand, whether under a contract or otherwise, for money or property and whether or not the State has title to the money or property that (i) is presented to an officer, employee or agent of the State or (ii) is made to a contractor, grantee or other recipient, if the money or property is to be spent or used on the State's behalf or to advance a State program or interest, and if the State government:

a. Provides or has provided any portion of the money or property that is requested or demanded; or

b. Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

A claim does not include requests or demands for money or property that the State has paid to an individual as compensation for State employment or as

an income subsidy with no restrictions on that individual's use of the money or property.

(3) "Judiciary." – A justice or judge of the General Court of Justice or clerk of court.

(4) "Knowing" and "knowingly." – Whenever a person, with respect to information, does any of the following:

a. Has actual knowledge of the information.

b. Acts in deliberate ignorance of the truth or falsity of the information.

c. Acts in reckless disregard of the truth or falsity of the information.

Proof of specific intent to defraud is not required.

(5) "Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.

(6) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(7) "Public employee," "public official," and "public employment" includes federal, State, and local employees and officials.

(8) "Senior executive branch official." – The Governor, Lieutenant Governor, member of the Council of State, or head of department as defined in G.S. 143B-3.

"**§ 1-607. False claims; acts subjecting persons to liability for treble damages; costs and civil penalties; exceptions.**

(a) Liability. – Any person who commits any of the following acts shall be liable to the State for three times the amount of damages that the State sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the State for the costs of a civil action brought to recover any of those penalties or damages, and shall be liable to the State for a civil penalty of not less than five thousand five hundred dollars ($5,500) and not more than eleven thousand dollars ($11,000) for each violation:

(1) Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval.

(2) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim.

(3) Conspires to commit a violation of subdivisions (1), (2), (4), (5), (6), or (7).

(4) Has possession, custody, or control of property or money used or to be used by the State and knowingly delivers or causes to be delivered less than all of that money or property.

(5) Is authorized to make or deliver a document certifying receipt of property used or to be used by the State and, intending to defraud the State, makes or delivers the receipt without completely knowing that the information on the receipt is true.

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the State who lawfully may not sell or pledge the property.

(7) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the State, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State.

(b) Damages Limitation. – Notwithstanding the provisions of subsection (a) of this section, the court may limit the damages assessed under subsection (a) of this section to not less than two times the amount of damages that the State sustains because of the act of the person

described in that subsection and may assess no civil penalty if the court finds all of the following:

(1) The person committing the violation furnished officials of the State who are responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information.

(2) The person fully cooperated with any investigation of the violation by the State.

(3) At the time the person furnished the State with information about the violation, no criminal prosecution, civil action, or administrative action has commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) Exclusion. – This section does not apply to claims, records, or statements made under Chapter 105 of the General Statutes.

"**§ 1-608. Civil actions for false claims.**

(a) Responsibilities of the Attorney General. – The Attorney General diligently shall investigate a violation under G.S. 1-607. If the Attorney General finds that a person has violated or is violating G.S. 1-607, the Attorney General may bring a civil action under this section against that person.

(b) Actions by Private Persons. – A person may bring a civil action for a violation of G.S. 1-607 or under G.S. 108A-70.12 for the person and for the State, as follows:

(1) The action shall be brought in the name of the State, and the person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be voluntarily dismissed by the person bringing the action only if the court and Attorney General have given written consent to the dismissal.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General pursuant to applicable rules of the North Carolina Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 120 days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within 120 days after it receives both the complaint and the material evidence and information.

(3) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subdivision (2) of this subsection. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 30 days after the complaint is unsealed and served upon the defendant pursuant to the North Carolina Rules of Civil Procedure.

(4) Before the expiration of the 120-day period or any extensions obtained under subdivision (3) of this subsection, the State shall:

a. Proceed with the action, in which case the action shall be conducted by the State; or

b. Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, the federal False Claims Act (31 U.S.C. § 3729 et seq.), or any similar provision of law in any other state, no person other than the State may intervene or bring a related action based on the facts underlying the pending action; provided

however that nothing in this subdivision prohibits a person from amending a pending action in another jurisdiction to allege a claim under this subsection.

(c) The Attorney General may retain a portion of the damages recovered for a State agency out of the proceeds of the action or settlement under this Article as reimbursement for costs incurred by the Attorney General in investigating and bringing a civil action under this Article, including reasonable attorneys fees and investigative costs. Retained funds shall be used by the Attorney General to carry out the provisions of this Article.

"**§ 1-609. Rights of the parties to qui tam actions.**

(a) If the State proceeds with an action under G.S. 1-608(b), it shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the qui tam plaintiff. The qui tam plaintiff shall have the right to continue as a party to the action, subject to the limitations set forth in subsections (b) through (e) of this section.

(b) The State may dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the State of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity for a hearing on the motion.

(c) The State may settle the action with the defendant notwithstanding the objections of the qui tam plaintiff if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be heard in camera.

(d) Upon a showing by the State that the qui tam plaintiff's unrestricted participation during the course of the litigation would interfere with or unduly delay the State's prosecution of the case or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

(1) Limiting the number of witnesses the qui tam plaintiff may call;

(2) Limiting the length of the testimony of those witnesses;

(3) Limiting the qui tam plaintiff's cross-examination of witnesses; or

(4) Otherwise limiting the participation by the qui tam plaintiff in the litigation.

(e) Upon a showing by the defendant that the qui tam plaintiff's unrestricted participation during the course of the litigation would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the qui tam plaintiff in the litigation.

(f) If the State elects not to proceed with the action, the qui tam plaintiff shall have the right to conduct the action. If the State so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the State's expense. When a qui tam plaintiff proceeds with the action, the court, without limiting the status and rights of the qui tam plaintiff, may permit the State to intervene at a later date upon a showing of good cause.

(g) Whether or not the State proceeds with the action, upon a showing by the State that certain actions of discovery by the qui tam plaintiff would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 120 days. Such a showing shall be conducted in camera. The court may extend the 120-day period upon a further showing in camera that the State has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigations or proceedings.

(h) Notwithstanding the provisions of G.S. 1-608(b), the State may elect to pursue its claim through any alternate remedy available to the State, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the qui tam plaintiff shall have the same rights in that proceeding as the qui tam plaintiff would have had if the action had continued under this section. Any finding of fact

or conclusion of law made in the other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the State, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

"**§ 1-610. Award to qui tam plaintiff.**

(a) Except as otherwise provided in this section, if the State proceeds with an action brought by a qui tam plaintiff under G.S. 1-608(b), the qui tam plaintiff shall, subject to subsection (b) of this section, receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action.

(b) Where the action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the qui tam plaintiff, relating to allegations or transactions (i) in a criminal, civil, or administrative hearing at the State or federal level, (ii) in a congressional, legislative, administrative, General Accounting Office, or State Auditor's report, hearing, audit, or investigation, or (iii) from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the qui tam plaintiff in advancing the case to litigation.

(c) Any payment to a qui tam plaintiff under subsection (a) or (b) of this section shall be made from the proceeds.

(d) The qui tam plaintiff shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(e) If the State does not proceed with an action under this Article, the qui tam plaintiff shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall not be less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of the proceeds. The qui tam plaintiff shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(f) Whether or not the State proceeds with the action, if the court finds that the qui tam plaintiff planned and initiated the violation of G.S. 1-607 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the qui tam plaintiff would otherwise receive under subsection (a), (b), or (e) of this section, taking into account the role of the qui tam plaintiff in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the qui tam plaintiff is convicted of criminal conduct arising from his or her role in the violation of G.S. 1-607, the qui tam plaintiff shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such a dismissal shall not prejudice the right of the State to continue the action.

(g) If the State does not proceed with the action and the qui tam plaintiff conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the qui tam plaintiff was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

"**§ 1-611. Certain actions barred.**

(a) No court shall have jurisdiction over an action brought under G.S. 1-608(b) against a member of the General Assembly, a member of the judiciary, or a senior executive branch official acting in their official capacity if the action is based on evidence or information known to the State when the action was brought.

(b) In no event may a person bring an action under G.S. 1-608(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the State is already a party.

(c) No civil action may be brought under this Article by a person who is or was a public employee or public official if the allegations of such action are substantially based upon either of the following:

(1) Allegations of wrongdoing or misconduct which such person had a duty or obligation to report or investigate within the scope of his or her public employment or office.

(2) Information or records to which the person had access as a result of his or her public employment or office.

(d) No court shall have jurisdiction over an action under G.S. 108A-70.12 based upon the public disclosure of allegations or transactions (i) in a criminal, civil, or administrative hearing at the State or federal level, (ii) in a congressional, legislative, administrative, General Accounting Office, or State Auditor's report, hearing, audit, or investigation, (iii) or from the news media, unless the action is brought by the Attorney General, or the person bringing the action is an original source of the information. For purposes of this section, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under G.S. 108A-70.12 that is based on the information.

"**§ 1-612. State not liable for certain expenses.**

The State is not liable for expenses that a person incurs in bringing an action under G.S. 1-608(b).

"**§ 1-613. Private action for retaliation action.**

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this Article, or in furtherance of other efforts to stop one or more violations of G.S. 1-607, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this Article, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in superior court for the relief provided in this section.

"**§ 1-614. Civil investigative demand.**

(a) A civil investigative demand is an administrative subpoena. Whenever the Attorney General has reason to believe that a person has information or is in possession, custody, or control of any document or other object relevant to an investigation or that would lead to the discovery of relevant information in an investigation of a violation of G.S. 1-607, the Attorney General may issue in writing and cause to be served upon the person, before bringing or intervening or making an election in an action under G.S. 1-608 or other false claims law, a civil investigative demand requiring the person to produce any documents or objects for their inspection and copying.

(b) The civil investigative demand shall:

(1) Be served upon the person in the manner required for service of process in civil actions and may be served by the Attorney General or investigator assigned to the North Carolina Department of Justice;

(2) Describe the nature of the conduct constituting the violation under investigation;

(3) Describe the class or classes of any documents or objects to be produced with sufficient definiteness to permit them to be fairly identified;
(4) Prescribe a reasonable date and time at which the person shall produce any document or object;
(5) Advise the person that objections to or reasons for not complying with the demand may be filed with the Attorney General on or before that date and time;
(6) Designate a person to whom any document or object shall be produced; and
(7) Contain a copy of subsections (b) and (c) of this section.

(c) The date within which any document or object must be produced shall be more than 30 days after the civil investigative demand has been served upon the person.

(d) A civil investigative demand may include an express demand for any product of discovery. A product of discovery includes the original or duplicate of any deposition, interrogatory, document, thing, examination, or admission, that is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature, and any digest, compilation, and index of any product of discovery. Whenever a civil investigative demand is an express demand for any product of discovery, a copy of the demand shall be served on the person from whom the discovery was obtained and shall notify the person to whom the demand is issued of the date on which the copy was served. A demand for a product of discovery shall not be returned or returnable until 30 days after a copy of the demand has been served on the person from whom the discovery was obtained. Any demand that is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law, other than this section, preventing or restraining disclosure of the product of discovery to any person. Disclosure of any product of discovery pursuant to any express demand does not constitute a waiver of any right or privilege that the person making the disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(e) The production of documents and objects in response to a civil investigative demand served under this section shall be made under a sworn certificate by the person to whom the demand is directed, or in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available. Upon written agreement between the person served with the civil investigative demand and the Attorney General, the person may substitute copies for originals of all or any part of the documents requested.

(f) If a person objects to or otherwise fails to comply with a civil investigative demand served upon the person under subsection (a) of this section, the Attorney General may file an action in superior court for an order to enforce the demand. Venue for the action to enforce the demand shall be in either Wake County or the county in which the person resides, is found, or transacts business. Notice of a hearing on the action to enforce the demand and a copy of the action shall be served upon the person in the same manner as prescribed in the Rules of Civil Procedure. If the court finds that the demand is proper, that there is reasonable cause to believe that there may have been a violation of G.S. 1-607, and that the information sought or document or object demanded is relevant to the violation, the court shall order the person to comply with the demand, subject to modifications the court may prescribe.

(g) If the person fails to comply with an order entered pursuant to subsection (f) of this section, the court may:
(1) Adjudge the person to be in contempt of court;
(2) Grant injunctive relief against the person to whom the demand is issued to restrain the conduct which is the subject of the investigation; or
(3) Grant any other relief as the court may deem proper.

(h) Any person who has received a civil investigative demand issued under this section or, in the case of an express demand for any product of discovery, the person from whom discovery was obtained may file and serve on the investigator identified in the demand, a petition for an order of the court to modify or set aside the demand. The petition may be filed in superior court in either Wake County or the county in which the person resides, is found, or transacts business, or, in the case of a petition to modify an express demand for any product of discovery, the petition shall be filed only in the court in which the proceeding in which the discovery was obtained or was last pending. Any petition under this subsection must be filed within 30 days after the date of service of the civil investigative demand or before the return date specified in the demand, whichever date is earlier, or within a longer period as may be prescribed in writing by the investigator identified in the demand. The petition shall specify each ground upon which the petitioner relies in seeking relief and may be based upon any failure to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(i) Any documents and objects produced pursuant to this section may be used in connection with any civil action brought under G.S. 1-608 and for any use that is consistent with the law, and the regulations and policies of the Attorney General, including use in connection with internal Attorney General memoranda and reports; communications between the Attorney General and a Federal, State, or local governmental agency, or a contractor of a Federal, State, or local governmental agency, undertaken in furtherance of an Attorney General investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding applications, motions, memoranda and briefs submitted to a court or other tribunal; and communications with government investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and mediators, concerning an investigation, case or proceeding. Any documents and objects obtained by the Attorney General under this section may be shared with any qui tam relator if the Attorney General determines it is necessary as part of any false claims act investigation. Before using or sharing documents and objects obtained by the Attorney General under this section with any person, the Attorney General may require that the person agree to an order of the court protecting the documents or objects, or any information contained in the documents or objects, from disclosure by that person. In the case of documents or objects the court has designated as confidential business, trade secrets or personal information, the Attorney General shall require that the person with whom documents or objects are shared be prohibited from disclosing the documents or objects, or any information contained in the documents or objects.

(j) The Attorney General may designate an employee of the North Carolina Department of Justice to serve as a custodian of documents and objects.

(k) Except as otherwise provided in this section, no documents or objects, or copies thereof, while in the possession of the North Carolina Department of Justice, shall be available for examination by any person other than an employee of the North Carolina Department of Justice. The prohibition in the preceding sentence on the availability of documents or objects, shall not apply if consent is given by the person who produced the documents or objects, or, in the case of any product of discovery produced pursuant to an express demand, consent is given by the person from whom the discovery was obtained, or prevent disclosure to any other federal or State agency for use by that agency in furtherance of its statutory responsibilities upon application made by the Attorney General to the superior court showing substantial need for the use of the documents or objects by any agency in furtherance of its statutory responsibilities.

(l) While in the possession of the custodian and under reasonable terms and conditions as the Attorney General shall prescribe, documents or objects shall be available for examination by the person who produced the documents or objects, or by a representative of that person authorized by that person to examine the documents or objects.

(m) If any documents or objects have been produced by any person in the course of any investigation pursuant to a civil investigative demand under this section, and any case or proceeding before any court arising out of the investigation, or any proceeding before any agency involving the documents or objects, has been completed, or no case or proceeding in which the documents or objects may be used has been commenced within a reasonable time after completion of the investigation, the custodian shall, upon written request of the person who produced the documents or objects, return to the person any documents or objects that have not passed into the control of any court or agency.

(n) The North Carolina Rules of Civil Procedure shall apply to this section to the extent that the rules are not inconsistent with the provisions of this section.

"**§ 1-615. False claims procedure.**

(a) Statute of Limitations. – A civil action under G.S. 1-608 may not be brought (i) more than six years after the date on which the violation of G.S. 1-607 was committed or (ii) more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the State of North Carolina charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

(b) If the Attorney General elects to intervene and proceed with an action brought under G.S. 1-608(b), the State may file its own complaint or amend the complaint of a person who has brought an action under G.S. 1-608(b) to clarify or add detail to the claims with respect to which the State is intervening and to add any additional claims with respect to which the State contends it is entitled to relief. For statute of limitations purposes, any such State pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the State arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(c) Burden of Proof. – In any action brought under G.S. 1-608, the State or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Estoppel. – Notwithstanding any other provision of law, a final judgment rendered in favor of the State in a criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and which is brought under G.S. 1-608.

(e) Venue. – Venue for any action brought pursuant to G.S. 1-608 shall be in either Wake County or in any county in which a claim originated, or in which any statement or record was made, or acts done, or services or property rendered in connection with any act constituting part of the violation of this Article.

(f) Service on Federal, State, or local authorities. – With respect to the United States or any State or local government that is named as a co-plaintiff in an action brought under G.S. 1-608, a seal on the action ordered by the court under G.S. 1-608(b) shall not preclude the State or the person bringing the action from serving the complaint, any other pleadings, or the written disclosure of substantially all material evidence and information possessed by the person bringing the action on the law enforcement authorities that are authorized under the law of the United States, that State or local government to investigate and prosecute such actions on behalf of such governments, except that such seal applies to the law enforcement authorities so served to the same extent as the seal applies to other parties in the action.

(g) A civil action may not be brought under both this Article and Part 7 of Article 2 of Chapter 108A of the General Statutes.

"**§ 1-616. Remedies under other laws; severability of provisions; liberality of legislative construction; adoption of legislative history.**

(a) Remedies Under Other Laws. – The provisions of this Article are not exclusive, and the remedies provided for in this Article shall be in addition to any other remedies provided for in any other law or available under common law. No criminal or administrative action need be brought against any person as a condition for establishing civil liability under this section.

(b) If any provision of this Article or the application of this Article to any person or circumstance is held to be unconstitutional, the remainder of this Article and the application of the provision to other persons or circumstances shall not be affected by that holding.

(c) This Article shall be interpreted and construed so as to be consistent with the federal False Claims Act, 31 U.S.C. § 3729, et seq., and any subsequent amendments to that act.

"**§ 1-617. Reporting.**

(a) In reporting on the terms and disbursements set forth in any settlement agreement or final order or judgment in a case filed under this Article as required by G.S. 114-2.5, the report shall include the percentage of the proceeds and the amount paid to any qui tam plaintiff under G.S. 1-610.

(b) On or before February 1 of each year, the Attorney General shall submit to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the House of Representatives and the Senate a report on the number of qui tam cases under this Article pending in the State and the number of qui tam cases pending in other jurisdictions involving the State during the previous calendar year.

"**§ 1-618. Rules.**

The Attorney General may adopt rules necessary to carry out the purposes set forth in this Article."

SECTION 2. Part 6 of Article 2 of Chapter 108A of the General Statutes is amended by adding a new section to read:

"**§ 108A-63.1. Health care fraud subpoena to produce documents.**

(a) The Attorney General, acting through the Medicaid Investigations Unit of the Department of Justice, may, when engaged in an investigation of an alleged violation of G.S. 108A-63 and prior to the arrest of a suspect, issue in writing and cause to be served a subpoena to produce documents upon any corporation or governmental entity requiring the production of any records, books, papers, electronic media, objects, or other documents which may be relevant to a criminal investigation of a violation of G.S. 108A-63.

(b) A subpoena under this section may require the custodian of records of the corporation or governmental entity to produce an affidavit certifying that the custodian made a thorough and diligent search for the documents requested and that the documents produced constitute all the records requested to the best of the custodian's knowledge, information, and belief.

(c) A subpoena under this section shall describe the documents required to be produced and prescribe a return date within a reasonable period of time, of no less than 20 days from the date of service, within which the documents can be assembled and made available.

(d) A corporation or governmental entity may comply with a subpoena issued under this section by delivering the documents to the Medicaid Investigations Unit:

(1) By hand delivery;

(2) By mailing the documents by certified mail;

(3) By making the documents reasonably available for transfer to an agent of the Medicaid Investigations Unit at a place of business of the corporation or governmental entity; or

(4) If agreed to by the Medicaid Investigations Unit and the corporation or governmental entity, by any other means.

(e) A corporation or governmental entity may move to quash or modify a subpoena issued under this section if it is oppressive or unreasonable or does not comply with the requirements of this section. The motion must be made before the time specified in the subpoena for production and may be made before a judge of the superior court.

(f) In the case of failure by any corporation or governmental entity without adequate excuse to obey a subpoena issued under this section, the Attorney General may invoke the aid of a judge of the superior court. The court may issue an order requiring the subpoenaed corporation or governmental entity to appear before the Attorney General to produce records. Failure to obey the order of the court may be punished as contempt of court."

SECTION 3. G.S. 108A-63 reads as rewritten:

"**§ 108A-63. Medical assistance provider fraud.**

(a) It shall be unlawful for any provider of medical assistance under this Part to knowingly and willfully make or cause to be made any false statement or representation of a material fact:

(1) In any application for payment under this Part, or for use in determining entitlement to such payment; or

(2) With respect to the conditions or operation of a provider or facility in order that such provider or facility may qualify or remain qualified to provide assistance under this Part.

(b) It shall be unlawful for any provider of medical assistance to knowingly and willfully conceal or fail to disclose any fact or event affecting:

(1) His initial or continued entitlement to payment under this Part; or

(2) The amount of payment to which such person is or may be entitled.

(c) ~~Any~~Except as otherwise provided in subsection (e) of this section, any person who violates a provision of this section shall be guilty of a Class I felony.

(d) "Provider" shall include any person who provides goods or services under this Part and any other person acting as an employee, representative or agent of such person.

(e) In connection with the delivery of or payment for benefits, items, or services under this Part, it shall be unlawful for any provider of medical assistance under this Part to knowingly and willfully execute, or attempt to execute, a scheme or artifice to:

(1) Defraud the Medical Assistance Program.

(2) Obtain, by means of false or fraudulent pretenses, representations, or promises of material fact, any of the money or property owned by, or under the custody or control of, the Medical Assistance Program.

A violation of this subsection is a Class H felony. For the purposes of this subsection, "scheme" includes a plan or course of action.

(f) It shall be unlawful for any provider, with the intent to obstruct, delay, or mislead an investigation of a violation of this section by the Attorney General's Office, to knowingly and willfully make or cause to be made a false entry in, alter, destroy, or conceal, or make a false statement about a financial, medical, or other record related to the provision of a benefit, item, or service under this Part."

SECTION 4. Sections 1 of this act becomes effective January 1, 2010 and applies to acts committed and actions filed on or after that date. A civil action may be filed after January 1, 2010 under Section 1 of this act based on acts committed prior to that date if the activity would also be covered under Part 7 of Article 2 of Chapter 108A of the General Statutes and if the limitation period set forth in G.S. 1-615(a) and 108A-70.13 has not lapsed. The remainder of this act becomes effective July 1, 2009.

HOUSE BILL 1135:
Qui Tam/Liability for False Claims

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	July 20, 2009
Introduced by:	Reps. Ross, Hall, Glazier, Martin	**Prepared by:**	R. Erika Churchill
Analysis of:	Fourth Edition		Committee Counsel

SUMMARY: ***House Bill 1135 creates a new Article entitled the False Claims Act, which is intended to deter persons from submitting or assisting in the submission of false claims to the State. The bill makes the penalty for obtaining money by false claims three times the amount of damages plus costs and civil penalties. The bill also authorizes private persons to file an action on behalf of the person and the State and to share in any proceeds under certain circumstances.***

Section 2 adds a new section to the law allowing the Attorney General to issue subpoenas to produce records to corporations or other entities in connection with criminal investigations of health care providers.

Section 3 amends existing law to make it a Class H felony for a provider to defraud Medicaid.

CURRENT LAW:

Under current law, a person would be guilty of the crime of obtaining property by false pretenses if the person makes a false representation of fact or a future event that is calculated and intended to deceive another person and in fact deceives another person, and the defendant thereby obtains money or property from the other person. Obtaining property by false pretenses is punishable as a Class H felony or a Class C felony if the property taken is $100,000.00 or more.

If a false representation has been made and has in fact deceived another person, but the defendant has not gained possession of the property, the crime has not occurred.

G.S. 108A-63 makes it a Class I felony for a Medicaid provider to make false representations on an application to determine eligibility or to conceal or fail to disclose facts affecting continued eligibility or the amount of payments.

BILL ANALYSIS:

House Bill 1135 adds a new Article to the Civil Procedure Law, entitled 'False Claims Act.' The act includes the following provisions:

- Creates a civil remedy against persons who knowingly cause or conspire to cause the payment or approval for payment of a false or fraudulent claim by the State. Such person is liable for treble damages plus the costs of the action and the Attorney General's investigation. In addition, the person is liable for a civil penalty of not less than $5,000 or more than $11,000 for each violation.
- Authorizes a private person to bring a civil action for a violation of this section in the name of the State and the individual who is known as the qui tam plaintiff. The complaint must be served on the Attorney General who may elect to intervene in the case. The complaint is kept under seal for 120 days and may not be served on the defendant until the court orders. The Attorney General also has an independent duty to investigate potential violations and may bring an action under the section.

- Authorizes the State to limit the participation of a qui tam plaintiff, if the State proceeds with the action. If the action is successful, the qui tam plaintiff may receive at least 15% but not more than 25% of the proceeds of the action, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action. If the action was based primarily on disclosures of specific information from specified sources (civil or criminal hearings, governmental reports or hearings, or the news media) other than the qui tam plaintiff, the qui tam plaintiff can receive no more than 10% of the proceeds. If the State does not proceed with the action, and the action is successful, the plaintiff may be awarded between 25% and 30% of the proceeds. If the qui tam plaintiff proceeds with an action and it is unsuccessful, the defendant may be awarded attorneys' fees and expenses if the court finds that the case was frivolous or that the plaintiff's purpose was harassment.
- Bars certain actions, including those based on public disclosure of information in a criminal, civil, or administrative hearing, or a legislative, GAO, or State Auditor report or investigation, unless the action is brought by the Attorney General or by the person who was the "original source" of the information.
- Authorizes the Attorney General to issue civil investigative demands for the production of document or other objects relevant to an investigation. The Attorney General may enforce a civil investigative demand in superior court.
- Establishes the procedure for false claim actions. The statute of limitation is the later of 6 years after the violation was committed, or 3 years after the facts are known or should have been known, but in no event more than 10 years after the violation was committed. The State and/or the qui tam plaintiff have the burden of proving the case by a preponderance of the evidence. If the State is intervening, the complaint shall relate back to the filing of the original complaint by the private person for the purposes of the statute of limitations.
- Requires reporting of qui tam cases involving the State to be reported by the Attorney General annually to the Joint Legislative Commission on Governmental Operations.

Section 2 of the bill adds a new section to the law governing Medicaid fraud cases. The section authorizes the Attorney General to issue subpoenas to produce documents to any corporation or government entity with information relevant to a criminal investigation. The subpoena may require the custodian of records of the corporation or governmental entity to certify that all available records have been provided. Failure to respond to the subpoena can be punished as a contempt of court.

Section 3 amends the law governing Medicaid provider fraud by adding language making it a Class H felony to obtain money or property by false pretenses. The section also makes it unlawful to obstruct an investigation or to conceal, alter or destroy records with the intent to defraud.

EFFECTIVE DATE: Section 1 becomes effective January 1, 2010 and applies to acts committed and actions filed on or after that date. A civil action may be filed after January 1, 2010 based on acts committed prior to that date if the activity would also be covered under Part 7 of Article 2 of Chapter 108A (Medicaid fraud). The remainder of the act becomes effective July 1, 2009.

*This summary was substantially contributed to by Tim Hovis and Karen Cochrane-Brown, Staff Attorneys.

SENATE JUDICIARY I COMMITTEE
(Civil)

July 30, 2009
9:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Thursday, July 30, 2009, at 9:00 a.m. in Room 1027 of the Legislative Building. Senators present were Committee Chairman Senator Martin L. Nesbitt, Vice-Chairmen Senators Dan Clodfelter, Pete Brunstetter, R.C. Soles, and Josh Stein; members, Senators Phil Berger, Dan Blue, Andrew Brock, Harry Brown, Ellie Kinnaird, Floyd McKissick, David Rouzer and Jerry Tillman; Staff Counsel Erika Churchill, Giles Perry, Susan Sitze and Bill Patterson; Committee Assistants Jan Lee and Jessica Bennett.

Chairman Nesbitt called the meeting to order and recognized Representative Melanie Goodwin to explain H.B. 907 – Public Campaign Fund Changes. She said the State Board of Elections requested the changes. Staff Counsel Erika Churchill was recognized to give an analysis of the bill. There was discussion and questions and concerns from the committee members. Kim Strapp from the North Carolina Board of Elections spoke on value of contributions. Senator Kinnaird moved for a favorable report for H.B. 907 and the motion passed.

Senator Nesbitt recognized Representative Goodwin to explain H.B. 908 – Election Administration Amendments. A Proposed Committee Substitute for H.B. 908 was distributed and Senator Clodfelter moved to adopt the PCS for discussion. Staff Counsel Erika Churchill explained the PCS for H.B. 908. Johnnie McLean and Cherie Poucher with the State Board of Elections spoke on the bill and answered questions. Bill Gilkesin with Research assisted in answering questions. Senator Berger moved to give the PCS for H.B. 908 a favorable report and unfavorable to the original bill.

Senator Nesbitt had to leave the meeting to attend another meeting and Senator Soles was asked to chair.

Senator Soles recognized Representative Bruce Goforth to speak on H.B. 209 – Sex Offender Registry/Liberties w/Student. Representative Goforth explained the bill and Susan Sitze was recognized to give an analysis of the bill. After discussion and questions Senator Brown moved to give the bill a favorable report and the motion passed.

Senator Stein was recognized to speak on H.B. 1135 – Qui Tam/Liability for False Claims. A Proposed Committee Substitute for H.B. 1135 was distributed and Senator Stein moved it adopted for discussion. The motion carried. Senator Stein spoke on the bill and Erika Churchill assisted. Senator Kinnaird moved to give the PCS for H.B. 1135 a favorable report and unfavorable to original bill. The motion passed.

The meeting was adjourned.

Copies of House Bill 104, Proposed Senate Committee Substitute for H.B. 104, Bill Analysis for PCS for H.B. 104; H.B. 908, PCS for H.B. 908, Bill Analysis for H.B. 908; H.B. 209, Bill Analysis for H.B. 209, H.B. 1135, Bill Analysis for H.B. 1135 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, respectively.

Respectfully Submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W. Lee

Janette W. Lee
Committee Assistant

Juliana Proctor (Sen. Nesbitt)

Principal Clerk x
Reading Clerk x

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	July 30, 2009	**9:00-11:00** AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 104	LEC Term Changes/Ethics Training.	Representative Lucas Representative Stam Representative Glazier Representative McGee
HB 209	Sex Offender Registry/Liberties w/ Student.	Representative Goforth Representative Glazier Representative Warren Representative Insko
HB 817	Establish NC Financial Literacy Council.	Representative Howard Representative Glazier Representative Tillis Representative Wainwright
HB 907	Public Campaign Fund Changes.	Representative Goodwin
HB 908	Election Administration Amendments.	Representative Goodwin
HB 1111	Campaign Finance Amendments.	Representative Goodwin
HB 1135	Qui Tam/Liability for False Claims.	Representative Martin Representative Ross Representative Hall Representative Glazier
HB 1329	Consolidate Expunction Statutes.	Representative Bordsen Representative Adams Representative Bryant Representative Moore

Senator Martin L. Nesbitt, Jr., Chair

Juliana Proctor (Sen. Nesbitt)

Principal Clerk _____
Reading Clerk _____

EDITED NOTICE – HB 1329 HAS BEEN REMOVED FROM THE AGENDA.

SENATE
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HB 907	Public Campaign Fund Changes.	Representative Goodwin
HB 908	Election Administration Amendments.	Representative Goodwin
HB 1111	Campaign Finance Amendments.	Representative Goodwin
HB 1135	Qui Tam/Liability for False Claims.	Representative Martin Representative Ross Representative Hall Representative Glazier

Senator Martin L. Nesbitt, Jr., Chair

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 104*
Committee Substitute Favorable 2/26/09

Short Title: LEC Term Changes/Ethics Training. (Public)

Sponsors:

Referred to:

February 11, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR FOUR-YEAR STAGGERED TERMS OF OFFICE FOR MEMBERS OF THE LEGISLATIVE ETHICS COMMITTEE AND TO AMEND THE TIMING OF ETHICS TRAINING FOR LEGISLATORS AS RECOMMENDED BY THE LEGISLATIVE ETHICS COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-99 reads as rewritten:

"**§ 120-99. Creation; composition.**

(a) The Legislative Ethics Committee is created and shall consist of 12 members, six Senators appointed by the President Pro Tempore of the Senate, ~~among them – three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader,~~ and six members of the House of Representatives appointed by the Speaker of the ~~House, among them – three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader.~~ House. The President Pro Tempore of the Senate shall appoint three members from a list of nominees submitted by the majority leader of the Senate and three members from a list of nominees submitted by the minority leader of the Senate. The Speaker of the House shall appoint three members from a list of nominees submitted by the majority leader of the House and three members from a list of nominees submitted by the minority leader of the House. The nominating majority or minority leader shall submit to the person making the appointment a list of twice the number of vacancies on the Committee that are to be filled from that leader's nominees.

(b) The President Pro Tempore of the Senate and the Speaker of the House as the appointing officers shall each designate a cochair of the Legislative Ethics Committee from the respective officer's ~~appointees.~~appointees to serve as cochair for the current General Assembly, and until the cochair's successor is designated. The cochair appointed by the President Pro Tempore of the Senate shall preside over the Legislative Ethics Committee during the odd-numbered year, and the cochair appointed by the Speaker of the House shall preside in the even-numbered year. ~~However, a~~ A cochair may preside at anytime during the absence of the presiding cochair or upon the presiding cochair's designation. In the event a cochair is unable to act as cochair on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the respective officer shall designate from that officer's appointees a member to serve as cochair for that specific matter.

(c) Repealed by Session Laws 2006-201, s. 8, effective January 1, 2007.

(d) The appointments of the President Pro Tempore of the Senate and the Speaker of the House shall ensure that the composition of the Legislative Ethics Committee is bipartisan in equal numbers."

SECTION 2. G.S. 120-100 reads as rewritten:

"**§ 120-100. Term of office; vacancies.**

(a) Appointments to the Legislative Ethics Committee shall be made immediately after the convening of the regular session of the General Assembly in odd-numbered ~~years, and appointees shall serve until the expiration of their then-current terms as members of the General Assembly.~~years. The term of office for members of the Legislative Ethics Committee shall be four years from the date of the convening of the General Assembly in which the member is appointed to the Committee. Members shall not serve two consecutive full terms.

(b) A vacancy occurs on the Legislative Ethics Committee when a member resigns or is no longer a member of the General Assembly. A vacancy occurring for any reason during a term shall be filled for the unexpired term by the authority making the appointment which caused the vacancy, and the person appointed to fill the vacancy shall, if possible, be a member of the same political party as the member who caused the ~~vacancy.~~vacancy, from a list of two nominees submitted by that party's leader.

(c) In the event a member of the Legislative Ethics Committee is unable to act on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the appointing officer may appoint another member of the respective chamber from a list of two members submitted by the majority leader or minority leader who nominated the member who is unable to act on the matter to serve as a member of the Legislative Ethics Committee for the specific matter only. If on any specific matter, the number of members of the Legislative Ethics Committee who are unable to act on a specific matter exceeds four members, the appropriate appointing officer shall appoint other members of the General Assembly to serve as members of the Legislative Ethics Committee for that specific matter only."

SECTION 3. Notwithstanding G.S. 120-100(a) as amended in Section 2 of this act, legislators appointed as members of the Legislative Ethics Committee for the 2009 General Assembly shall serve initial terms as follows:

(1) Two senators appointed by the President Pro Tempore of the Senate upon the recommendation of the minority leader of the Senate and one senator appointed by the President Pro Tempore of the Senate upon the recommendation of the majority leader of the Senate shall be designated by the President Pro Tempore as having a term of two years. Two senators appointed by the President Pro Tempore of the Senate upon the recommendation of the majority leader of the Senate and one senator appointed by the President Pro Tempore of the Senate upon the recommendation of the minority leader of the Senate shall be designated by the President Pro Tempore as having a term of four years.

(2) Two representatives appointed by the Speaker of the House upon the recommendation of the minority leader of the House and one representative appointed by the Speaker of the House upon the recommendation of the majority leader of the House shall be designated by the Speaker as having a term of two years. Two representatives appointed by the Speaker of the House upon the recommendation of the majority leader of the House and one representative appointed by the Speaker of the House upon the recommendation of the minority leader of the House shall be designated by the Speaker as having a term of four years.

SECTION 4. G.S. 138A-14(c) reads as rewritten:

"(c) The Commission, jointly with the Committee, shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment, or employment and shall offer periodic refresher presentations as the Commission and the Committee deem appropriate. Every legislator ~~and legislative employee~~

shall participate in an ethics presentation approved by the Commission and Committee within ~~three~~ two months of either the convening of the General Assembly to which the legislator is elected or within two months of the legislator's appointment, whichever is later. ~~legislative employee's election, reelection, appointment, or~~Every legislative employee shall participate in an ethics presentation approved by the Commission and Committee within three months of employment, and ~~every legislative employee~~ shall attend refresher ethics education presentations at least every two years thereafter, in a manner as the Commission and Committee deem appropriate."

SECTION 5. This act is effective when it becomes law

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 104*
Committee Substitute Favorable 2/26/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H104-CSRC-40 [v.8]

6/24/2009 5:53:15 PM

Short Title: Clarify Legislative Confidentiality. (Public)

Sponsors:

Referred to:

February 11, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY LEGISLATIVE CONFIDENTIALITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 17 of Chapter 120, as amended by S.L. 2009-129, reads as rewritten:

"Article 17.
Confidentiality of Legislative Communications.

"§ 120-129. Definitions.

As used in this Article:

(1) "Document" means all records, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material regardless of physical form or characteristics.

(1a) "Legislative commission" means any commission or committee which the Legislative Services Commission is directed or authorized to staff by law or resolution and which it does, in fact, staff.

(2) "Legislative employee" means employees and officers of the General Assembly, consultants and counsel to members and committees of either house of the General Assembly or of legislative commissions who are paid by State funds, students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Services Commission, and employees of the School of Government at the University of North Carolina at Chapel Hill; but does not mean legislators and members of the Council of State.

(3) "Legislator" means a member-elect, member-designate, or member of the North Carolina Senate or House of Representatives.

"§ 120-130. Drafting and information requests to legislative ~~employees.~~employees; constituent inquiries.

(a) A drafting request made to a legislative employee from a legislator is confidential. Neither the identity of the legislator making the request nor, except to the extent necessary to answer the request, the existence of the request may be revealed to any person who is not a legislative employee without the consent of the legislator.

(b) An information request made to a legislative employee from a legislator is confidential. Neither the identity of the legislator making the request nor, except to the extent necessary to answer the request, the existence of the request may be revealed to any person who is not a legislative employee without the consent of the legislator. Notwithstanding the preceding sentences of this subsection, the periodic publication by the Fiscal Research Division of the Legislative Services Office of a list of information requests is not prohibited, if the identity of the legislator making the request is not revealed.

(c) ~~Any~~ Documents submitted to a legislator by another person, or any supporting documents submitted ~~or caused to be submitted~~ to a legislative employee by a legislator in connection with a drafting or information request are confidential. Except to the extent necessary to answer the request, neither the document nor copies of it, nor the identity of the person, firm, or association producing it, may be provided to any person who is not a legislative employee without the consent of the legislator.

(d) Drafting requests, ~~or~~ information ~~requests or~~ requests, and ~~supporting~~ documents submitted under subsection (c) of this section are not "public records" as defined by G.S. 132-1. A document that is a public record shall continue to be treated as a public record notwithstanding its inclusion as a supporting document to a drafting or information request.

"§ 120-131. Documents produced by legislative employees.

(a) Documents prepared by legislative employees upon the request of legislators are confidential. Except as provided in subsection (b) of this section, the existence of the document may not be revealed nor may a copy of the document be provided to any person who is not a legislative employee without the consent of the legislator.

(b) A document prepared by a legislative employee upon the request of a legislator becomes available to the public when the document is a:

(1) Bill or resolution and it has been introduced;

(2) Proposed amendment or committee substitute for a bill or resolution and it has been offered at a committee meeting or on the floor of a house;

(3) Proposed conference committee report and it has been offered at a joint meeting of the conference committees; or

(4) Bill, resolution, memorandum, written analysis, letter, or other document resulting from a drafting or information request and it has been distributed at a legislative commission or standing committee or subcommittee meeting not held in executive session, closed session, or on the floor of a house.

(b1) A document prepared by a legislative employee upon the request of any legislator, that pursuant to this Article does not become available to the public, is not a "public record," as defined by G.S. 132-1.

(c) This section does not prohibit the dissemination of information or language contained in any document which has been prepared by a legislative employee in response to a substantially similar request from another legislator, provided that the identity of the requesting legislator and the fact that he had made such a request not be divulged.

"§ 120-131.1. Requests from legislative employees for ~~assistance in the preparation of fiscal notes and evaluation reports.~~assistance.

(a) A request, including any ~~accompanying~~ supporting documents, made to an agency employee by a legislative employee of the Fiscal Research Division for assistance in the preparation of a fiscal note is confidential. An agency employee who receives such a request or who learns of such a request made to another agency employee ~~of his or her agency~~ shall reveal the existence of the request only to other agency employees of the agency to the extent that it is necessary to respond to the request, and to the agency employee's supervisor and to the Office of State Budget and Management. All documents prepared by the agency employee in response to the request of the Fiscal Research Division are also confidential and shall be kept confidential in the same manner as the original request, except that documents submitted to the

Fiscal Research Division in response to the request cease to be confidential under this section when the Fiscal Research Division releases a fiscal note based on the documents.

(a1) A request, and any ~~accompanying~~ supporting documents, made to an agency employee by a legislative employee of the Program Evaluation Division for assistance in the preparation of an evaluation report is confidential. The request and any ~~accompanying~~ supporting documents are not "public records" as defined by G.S. 132-1. An agency employee who receives a request under this subsection or who learns of such a request made to another agency employee ~~of his or her agency~~ may reveal the existence of the request to other agency employees to the extent that it is necessary to respond to the request and to the agency employee's supervisor. All documents prepared by the agency employee in response to the request of a legislative employee of the Program Evaluation Division are confidential, shall be kept confidential in the same manner as the original request, and are not "public records" as defined in G.S. 132-1.

(a2) A request, and any supporting documents, made to an agency employee by a legislative employee pursuant to G.S. 120-130 or G.S. 120-131, is confidential. An agency employee who receives such a request or who learns of such a request made to another agency employee shall reveal the existence of the request only to other agency employees of the agency to the extent that it is necessary to respond to the request, and to the agency employee's supervisor. All documents prepared by the agency employee in response to the request of a legislative employee under this subsection are also confidential and shall be kept confidential in the same manner as the original request. The request, any supporting documents to the request and any documents prepared by the agency employee in response to a request under this subsection are not "public records" as defined by G.S. 132-1.

(a3) Requests and documents confidential under this section shall bear an indication on the face of the request or document that the request or document is confidential and not a public record pursuant to the section.

(b) As used in this section, "agency employee" means an employee or officer of every agency of North Carolina government or its subdivisions, including every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district, or other political subdivision of government.

(c) Violation of this section ~~may be grounds for disciplinary action.~~shall be subject to penalties as set forth in G.S. 120-134.

"§ 120-132. Testimony by legislative employees.

(a) Except as provided in subsections (b) and (c) of this section, ~~No~~ no present or former legislative ~~employees~~ employee may ~~be required to~~ disclose any information that the individual, while employed or retained by the State, may have acquired:

(1) In a standing, select, or conference committee or subcommittee of either house of the General Assembly or a legislative commission;

(2) On the floor of either house of the General Assembly, ~~or~~ in any office of a ~~legislator;~~ legislator, or at any other location of the State legislative buildings and grounds as defined in G.S. 120-32.1(d);

(3) As a result of communications that are confidential under G.S. 120-130 and G.S. 120-131.

(b) A present or former legislative employee may disclose information acquired under subsection (a) of this section that would be reflected in the official public record or was otherwise publicly disseminated.

(c) ~~Notwithstanding the provisions of the preceding sentence,~~ Subject to G.S. 120-9, 120-133, and the common law of legislative immunity, the presiding judge ~~of a court of competent jurisdiction~~ may compel ~~that disclosure,~~ disclosure of information acquired under

subsection (a) of this section if in ~~his~~ the judge's opinion, the ~~same~~ disclosure is necessary to a proper administration of justice.

"§ 120-133. Redistricting communications.

Notwithstanding any other provision of law, all drafting and information requests to legislative employees and documents prepared by legislative employees for legislators concerning redistricting the North Carolina General Assembly or the Congressional Districts are no longer confidential and become public records upon the act establishing the relevant district plan becoming law. Present and former legislative employees may be required to disclose information otherwise protected by G.S. 120-132 concerning redistricting the North Carolina General Assembly or the Congressional Districts upon the act establishing the relevant district plan becoming law.

"§ 120-134. Penalty.

Violation of any provision of this Article shall be grounds for disciplinary action in the case of current legislative employees, ~~for referral to the academic institution for appropriate discipline in the case of law student externs,~~ and for removal from office in the case of public officers. Violation of any provisions of this Article by a current legislative employee who is a law student extern shall be referred to the academic institution for appropriate discipline and the Legislative Services Commission may terminate the externship. Any other person who willfully violates any provision of this Article shall be guilty of a Class 3 misdemeanor. No other criminal penalty shall attach for any violation of this Article.

"§ 120-135. Additional restrictions on sharing confidential information.

Legislative employees hired by the Legislative Services Commission may not disclose confidential drafting and information requests under G.S. 120-130 or documents that are not made available to the public under G.S. 120-131 with a legislative employee not hired by the Legislative Services Commission unless specifically authorized to do so by the legislator who made the request or on whose behalf the legislative employee prepared the document."

SECTION 2. If House Bill 1134 of the 2009 General Assembly becomes law, G.S. 114-51(d) as enacted by House Bill 1134 of the 2009 General Assembly reads as rewritten:

"(d) This section shall not apply to the Judicial ~~Department.~~Department or the General Assembly. A member of the General Assembly may request the assistance of the Open Government Unit to assist with mediating a public records request."

SECTION 3. This act is effective when it becomes law except that the amendments to G.S. 120-134 in Section 1 of this act become effective December 1, 2009 and apply to offenses committed on or after that date.

HOUSE BILL 104:
Clarify Legislative Confidentiality

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	July 20, 2009
Introduced by:	Reps. Glazier, Lucas, Stam, McGee	**Prepared by:**	R. Erika Churchill Committee Counsel
Analysis of:	PCS to Second Edition H104-CSRC-40		

SUMMARY: ***The proposed committee substitute for House Bill 104 would make clarifying and substantive changes to Article 17 of Chapter 120 related to legislative confidentiality and also makes it clear that the Article does not abrogate the ability of a legislator to invoke legislative immunity if a legislative employee is being required to testify as to protected information.***

[As introduced, House Bill 104 was identical to Senate Bill 136, introduced by Sen. Clodfelter, which was signed by the Governor and has been chaptered as S.L. 2009-10.]

CURRENT LAW: Article 17 of Chapter 120 provides that drafting[1] and information[2] requests made by legislators to legislative employees are confidential, as are all supporting documents[3] the legislator submits or causes to be submitted to a legislative employee in connection with the drafting or information request. Drafting and information requests, including supporting documents are not "public records".[4] Legislative employees may not even acknowledge the existence of a request to any person who is not another legislative employee without the consent of the legislator.

Documents produced by a legislative employee in response to drafting and information requests are confidential.[5] Those documents become "available to the public" in only the following instances:

- When the document is introduced as a bill or resolution.
- When the document is a proposed as an amendment or committee substitute offered on the floor of a chamber or in a committee meeting.
- When the document is offered as a conference report at a joint meeting of the conference committee.
- When the document has been distributed on the floor of a chamber or at a committee or commission meeting not held in closed session.[6]

Requests by the Fiscal Research Division for assistance on the preparation of fiscal notes are confidential and the employees in another agency may not disclose the existence of the request or any documents created in response to the request unless and until the fiscal note is released.[7] Similar provisions apply to requests for assistance made by the Program Evaluation Division.[8]

No present or former legislative employee may be required to disclose any information obtained in a legislative committee or commission meeting, on the floor of either chamber, in any office of a

[1] G.S. 120-130(a).
[2] G.S. 120-130(b).
[3] G.S. 120-130(c).
[4] G.S. 120-130(d).
[5] G.S. 120-131(a).
[6] G.S. 120-131(b).
[7] G.S. 120-131.1(a).
[8] G.S. 120-131.1(b)

legislator, or as a result of communications that are confidential because they are information or drafting requests. [9] However, a court may compel disclosure "if in his opinion, the same if necessary to a proper administration of justice.[10] A violation of the Article "shall be grounds for disciplinary action in the case of employees" and removal from office in the case of public officers, but there are no criminal penalties.[11]

The common law doctrine of legislative immunity protects legislators from being compelled to testify as to their legislative acts.[12] This doctrine is reflected in G.S. 120-9 which provides that: "[t]he members shall have freedom of speech and debate in the General Assembly, and shall not be liable to impeachment or question, in any court or place out of the General Assembly, for words therein spoken." There are no North Carolina cases interpreting or applying legislative immunity, but other courts have held that it extends to legislative employees participating in the legislative process.

BILL ANALYSIS:

Section 1 of the bill would amend a variety of sections in Article 17 of Chapter 120. The changes in each section are outlined below.

§ 120-130 is amended to provide that documents submitted to a legislator from a constituent are confidential and are not public records.

There are no substantive changes to **§ 120-131** related to the confidentiality of documents produced by legislative employees at the request of legislators.

The changes in **§ 120-131.1** add two new subsections that would make information and drafting requests made by a legislative employee to an employee in another agency confidential. The request, any documents submitted or created as a result of the request would not be considered public records. All requests made under G.S. 120-131.1 (requests for fiscal notes, assistance with program evaluations and research and drafting requests) would have to be marked "confidential" and that the document is not a public record.

§ 120-132 is amended to prohibit a legislative employee from disclosing confidential information and to make it clear that a court's authority to compel the testimony of a legislative employee regarding confidential communications or matters related to the legislative process if the matter is limited by North Carolina's speech and debate clause, the common law of legislative immunity and **§G.S. 120-133** related to the confidentiality of redistricting communications.

§ 120-134 is amended to provide that it would be a Class 2 misdemeanor for a person who is not currently a legislative employee to breach legislative confidentiality.

A new section, **§ 120-135** is created to prohibit members of central staff from sharing confidential communications with other legislative employees who are not on central staff unless specifically authorized to do so by the legislator who holds the confidentiality.[13]

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[9] G.S. 120-132.

[10] Id., but see G.S. 120-133 which makes all drafting and information requests and all documents prepared by legislative employees concerning redistricting public records "upon the act establishing the relevant district plan becoming law.

[11] G.S. 120-134.

[12] For an in depth discussion of legislative immunity, See "Legislative Immunity in Minnesota", Peter S. Wattson, Senate Counsel, State of Minnesota, updated July 9, 2008.

[13] The punishment for a Class 2 misdemeanor for a person with no prior convictions is 1-30 days of community service and/or a fine of not more than $1000.

Section 2 provides that if HB 1134 (which creates an open government section in the Department of Justice) becomes law, a member may request the assistance of that agency to mediate a public records request that would require the expenditure of significant State resources in order to respond.

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

BACKGROUND: This proposed committee substitute is a recommendation of the Legislative Ethics Committee, a joint committee of the Senate and House of Representatives.

H104-SMST-63(CSRC-40) v3

Kory Goldsmith substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 908
Committee Substitute Favorable 4/9/09
Third Edition Engrossed 5/4/09

Short Title: Election Administration Amendments. (Public)

Sponsors:

Referred to:

April 1, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR EQUAL TREATMENT OF POLITICAL AND COMMERCIAL EXPRESSION AROUND A VOTING PLACE; TO CLARIFY THAT SEVENTEEN-YEAR-OLDS MAY REGISTER AT EARLY VOTING SITES UNDER THE SAME CONDITIONS THEY MAY REGISTER ELSEWHERE AND TO MAKE RELATED TECHNICAL CHANGES; TO PROHIBIT THE AWARDING OF ATTORNEYS' FEES AGAINST THE STATE BOARD OF ELECTIONS IN ELECTION PROTEST CASES; AND TO COMPLETE THE BURDEN OF PROOF PROVISIONS IN THE CANDIDATE-CHALLENGE STATUTE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 163-166.4 reads as rewritten:

"(b) Special Agreements About Election-Related Activity. – The Executive Director of the State Board of Elections may grant special permission for a county board of elections to enter into an agreement with the owners or managers of a nonpublic building to use the building as a voting place on the condition that election-related activity as described in subsection (a) of this section not be permitted on their property adjacent to the buffer zone, if the Executive Director finds all of the following:

(1) That no other suitable voting place can be secured for the precinct.

(2) That the county board will require the chief judge of the precinct to monitor the grounds around the voting place to ensure compliance with subdivision (4) of this subsection and to ensure that the restriction on election-related activity shall apply to all candidates and parties equally.

(3) That the pattern of voting places subject to agreements under this subsection does not disproportionately favor any party, racial or ethnic group, or candidate.

(4) That any restriction of political expression is also extended to commercial expression.

An agreement under this subsection shall be valid for as long as the nonpublic building is used as a voting place."

SECTION 1.(b) This section becomes effective January 1, 2010, and applies to primaries and elections held on and after that date.

SECTION 2.(a) G.S. 163-82.6A is amended by adding the following new subsection to read:

"(f) Voting in Primary. – Any person who will become qualified by age to register and vote in the general election for which a partisan or nonpartisan primary is held, even though not

so qualified by the date of the primary, may register for the primary and general election prior to the primary and then vote in the primary and general election after being registered in accordance with the provisions of this section."

SECTION 2.(b) G.S. 163-283 reads as rewritten:

"**§ 163-283. Right to participate or vote in party primary.**

No person shall be entitled to vote or otherwise participate in the primary election of any political party unless he

(1) Is a registered voter, and

(2) Has declared and has had recorded on the registration book or record the fact that he affiliates with the political party in whose primary he proposes to vote or participate, and

(3) Is in good faith a member of that party.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. 163-119 may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph.

Any person who will become qualified by age to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary election, shall be entitled to register while the registration books are open during the regular registration period prior to the primary and then to vote in the primary after being registered, provided however, under full-time and permanent registration, such an individual may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections. Such a person may also register and vote in the primary and general election pursuant to G.S. 163-82.6A(f)."

SECTION 2.(c) Article 23 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-283.1. Voting in nonpartisan primary.**

Any person who will become qualified by age to register and vote in the general election for which a nonpartisan primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such a person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary. Such a person may also register and vote in the primary and general election pursuant to G.S. 163-82.6A(f)."

SECTION 2.(d) G.S. 163-330 reads as rewritten:

"**§ 163-330. Voting in primary.**

Any person who will become qualified by age ~~or residence~~ to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary. Such a person may also register and vote in the primary and general election pursuant to G.S. 163-82.6A(f)."

SECTION 2.(e) G.S. 163-59 reads as rewritten:

"**§ 163-59. Right to participate or vote in party primary.**

No person shall be entitled to vote or otherwise participate in the primary election of any political party unless he:

(1) Is a registered voter, and

(2) Has declared and has had recorded on the registration book or record the fact that he affiliates with the political party in whose primary he proposes to vote or participate, and

(3) Is in good faith a member of that party.

Notwithstanding the previous paragraph, any unaffiliated voter who is authorized under G.S. 163-119 may also vote in the primary if the voter is otherwise eligible to vote in that primary except for subdivisions (2) and (3) of the previous paragraph.

Any person who will become qualified by age to register and vote in the general election ~~or regular municipal election~~ for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general ~~or regular municipal~~ election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary. In addition, persons who will become qualified by age to register and vote in the general election ~~or regular municipal election~~ for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections. Such a person may also register and vote in the primary and general election pursuant to G.S. 163-82.6A(f)."

SECTION 2.(f) G.S. 163-55(a) reads as rewritten:

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

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

(1) Persons under 18 years of age.

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

SECTION 3. G.S. 6-19.1 reads as rewritten:

"**§ 6-19.1. Attorney's fees to parties appealing or defending against agency decision.**

In any civil action, other than an adjudication for the purpose of establishing or fixing a rate, or a disciplinary action by a licensing board, brought by the State or brought by a party who is contesting State action pursuant to G.S. 150B-43 or any other appropriate provisions of law, unless the prevailing party is the State, the court may, in its discretion, allow the prevailing party to recover reasonable attorney's fees, including attorney's fees applicable to the administrative review portion of the case, in contested cases arising under Article 3 of Chapter 150B, to be taxed as court costs against the appropriate agency if:

(1) The court finds that the agency acted without substantial justification in pressing its claim against the party; and

(2) The court finds that there are no special circumstances that would make the award of attorney's fees unjust. The party shall petition for the attorney's fees within 30 days following final disposition of the case. The petition shall be supported by an affidavit setting forth the basis for the request.

Nothing in this section shall be deemed to authorize the assessment of attorney's fees for the administrative review portion of the case in contested cases arising under Article 9 of Chapter 131E of the General Statutes.

Nothing in this section grants permission to bring an action against an agency otherwise immune from suit or gives a right to bring an action to a party who otherwise lacks standing to bring the action.

Attorney's fees shall not be awarded against the State Board of Elections in any election protest brought under Article 15A of Chapter 163 of the General Statutes.

Any attorney's fees assessed against an agency under this section shall be charged against the operating expenses of the agency and shall not be reimbursed from any other source."

SECTION 4.(a) G.S. 163-127.5 reads as rewritten:

"**§ 163-127.5. Burden of proof.**

(a) The burden of proof shall be upon the candidate, who must show by a preponderance of the evidence of the record as a whole that he or she is qualified to be a candidate for the office.

(b) If the challenge to qualification is based upon ~~a question of residency,~~ an allegation that the candidate is not qualified for the office based on failure to establish residency required as a qualification of the office through a change of permanent domicile, the candidate must show all of the following:

(1) An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile.

(2) The acquisition of a new domicile by actual residence at another place.

(3) The intent of making the newer domicile a permanent domicile.

(c) Notwithstanding subsection (a) of this section, if the challenge to qualification is based upon an allegation that the candidate is not qualified for the office based on abandonment of residency required as a qualification of the office, the burden of proof shall be upon the challenger to show by a preponderance of the evidence that the candidate is not qualified to be a candidate for the office for this reason."

SECTION 4.(b) This section becomes effective January 1, 2010, and applies to primaries and elections held on and after that date.

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

HOUSE BILL 908:
Election Administration Amendments

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	July 13, 2009
Introduced by:	Rep. Goodwin	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to Third Edition H908-CSST-63		Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 908 would make various changes to the election laws regarding administration of elections.

CURRENT LAW & BILL ANALYSIS:

Sections 1, 18, 19, 20, 21. **[House Bill 1421, Representative Wainwright.]** Currently, the law gives county boards of elections, county boards of commissioners, and the State Board of Elections different responsibilities and powers with regard to voting systems. County commissioners purchase the voting system, but the county commissioners can only purchase a voting system approved by the county board of elections. The county board of elections may only approve voting systems approved by the State Board of Elections.

Legislation enacted in 2005 required a paper record for all voting, and also gave the State Board of Elections the responsibility to negotiate with election equipment vendors, through a process in which the request for proposal has strict requirements for bonding, accessibility of software for review, and maintenance. As a result of the central role in the process, the State Board began working with the vendor to do "coding" for ballots in all counties before each election. In 2007, at the State Board's request, the General Assembly gave the State Board that responsibility by statute and required the county boards of election to maintain printing standards and to "maintain software licensing and maintenance agreements necessary to maintain the warranty of its voting system."

Currently the law says the State Board is responsible for all ballot coding and shall contract with a qualified vendor or supervise trained election staff to produce the data necessary for equipment programming. ***Section 18 of the proposed committee substitute would change that to say the State Board shall oversee ballot coding, and the county shall contract with a qualified vendor certified by the State Board to produce the data necessary for programming or be certified by the State Board to produce the data. Effective January 1, 2010.***

Currently, the law says the State Board shall facilitate training and support of voting systems used by counties. ***Section 19 of the proposed committee substitute would add that the State Board may do that through videoconferencing or other technology.***

Section 20 of the proposed committee substitute adds language to the requirement that counties maintain software licensing and maintenance agreements on the voting system so the warranty will not be violated and lost. The new language says the county must maintain those agreements annually. It says the State Board shall not provide routine maintenance to any county that doesn't maintain its warranty, and if the State Board provides any maintenance to a system in such a county, the county must reimburse the State. It further says the county board of elections shall not repair or replace any voting system or portion of a voting system with State Board approval.

Section 1 of the proposed committee substitute amends the general powers of the State Board to provide that the State Board may by resolution delegate administrative matters to the Executive Director, as long as the resolution provides for State Board review of the decisions made.

***Section 21** of the proposed committee substitute amends the duties of the county board of elections with regard to voting in the precincts on election day by saying the county board shall provide adequate technical support for the voting system at the voting place.* The support shall be done in conjunction with the State Board.

Sections 2,3,4. **[House Bill 1281, Repsentative Underhill]** G.S. 163-33 lists the duties of the county board of election, which include a duty to "make and issue such rules, regulations, and instructions, not inconsistent with law or the rules established by the State Board of Elections, as it may deem necessary for the guidance of election officers and voters" and to "perform such other duties as may be prescribed by this Chapter or the rules of the State Board of Elections." G.S. 163-35 sets out the appointment, compensation, duties, and procedures for dismissal of a director of elections to the county board of elections. When a county board of elections has selected a new director of elections for appointment, the county board of elections must enter in its minutes the specified duties responsibilities, and designated authority assigned to the director of elections. The county board of elections may also empower the director of elections to perform assigned administrative duties, and in addition may authorize the director to execute responsibilities of the chairman of the board of elections, although such transference does not transfer the responsibility for compliance with the law. The county board of elections also has authority, by a resolution adopted by majority vote, to delegate to the director as much of the administrative detail of the election functions, duties, and work of the board as the board sees fit. Quasi-judicial or policy-making duties and authority may not be transferred, however. Acts by the director within the limits of the authorizing resolution are deemed to be the acts of the county board of elections. G.S. 163-22 lists the duties of the State Board of Elections. The first one is that it "shall have general supervision over the primaries and elections in the State, and it shall have authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of this Chapter." Various other statutes give the State Board authority to set requirements. G.S. 163-132.4 permits the Executive Director of the State Board of Elections to promulgate directives concerning its duties and duties of county boards of elections under Article 12A of Chapter 163. Additionally, G.S. 163-27 provides that the Executive Director "shall be responsible for staffing, administration, execution of the Board's decisions and orders and shall perform such other responsibilities as may be assigned by the Board."

***Section 2** of the proposed committee substitute would add language to the duties of the county board of elections in G.S. 163-33 language saying the county board's rules, regulations, and instructions shall not be inconsistent with directives of the Executive Director under G.S. 163-132.4 (directives related to the Article on Precinct Boundaries) or with rules, orders and directives of the State Board, and would add language saying the county board must perform such duties as are prescribed by directives from the Executive Director under 163-132.4 and by orders and directives of the State Board.*

***Sections 3 and 4** of the proposed committee substitute would require that the county board include in both its resolution outlining the duties of the newly hired director and in resolutions in which it delegates duties to the director language saying that the director must adhere to the duties delegated to the county board in 163-33.*

Section 5, 6, 11, 24, 25, 26. **[House Bill 908, Representative Goodwin]** Currently, a 17-year-old may register to vote in a primary if that person will be 18 at the time of the general election. That 17-year-old may vote in the primary that relates to that general election, but may not vote in other elections, such as a bond referendum, held before the voter turns 18. The State Board of Elections staff was concerned that

the new statute allowing same-day registration and voting at early voting sites did not specifically say that 17-year-old registration under the same conditions could be done at the early voting site. ***The proposed committee substitute would specifically state in the statutes that 17-year-olds may register and vote in primary elections at early voting sites.***

Sections 7, 8, 9, 10, 13, 14, 15, 16, 28, 29. **[House Bill 1260, Representative Bryant]** Article VI, Sec. 1 of the North Carolina Constitution requires that a person must be 18 years of age to vote. G.S. 163-55 provides that, with some limited exceptions in G.S. 163-59, persons less than 18 years of age shall not be allowed to vote in North Carolina. G.S. 163-59 permits 17 year olds who would be eligible to register and vote in the general election or regular municipal election for which a primary is held to register no more than 60 days before the primary and to vote in that primary. County boards of elections are required to register those individuals qualified to vote. The voter registration form required by G.S. 163-82.3 requires an individual to attest that they meet all eligibility requirements, including the age requirement, under penalty of a Class I felony. G.S. 115C-81(g1)(1) requires the State Board of Education to include in the high school social studies curriculum instruction on civic and citizenship education, including instruction on the importance of voting and otherwise participating in the democratic process.

The proposed committee substitute would provide for voter preregistration by 16 and 17 year olds as follows:

- Creates a new section authorizing a person otherwise qualified to register who is 16 but will not be 18 by the next election to preregister to vote, and automatically registering that person upon reaching the age of eligibility following verification of their qualifications and address.
- Provides for modification of the voter registration form to include appropriate questions for use for voter preregistration.
- Provides that the county board of elections must electronically forward preregistration applications to the State Board of Elections. No later than 60 days prior to the first election in which the applicant would be legally entitled to vote, the State Board would notify the appropriate county board of elections to verify the qualifications and address of the applicant in the same manner as other voter registration applications.
- Authorizes preregistration at drivers license offices and voter registration agencies, and directs applications received there to be forwarded to the State Board of Elections.
- Makes conforming change to statute requiring schools to make available voter registration forms to include preregistration forms.
- Requires the Governor to annually, rather than biennially, proclaim a Citizen Awareness Month for statewide voter registration drives, and requires county boards of elections to conduct voter registration and preregistration drives at public high school in accordance with local board of education policies, school system administrative guidelines, and guidelines of the State Board of Elections.
- Requires instruction on voter registration and preregistration as part of the social studies curriculum.
- Encourages local boards of education to encourage adopt policies to promote student voter registration and preregistration, including collaboration with county board of education for

preregistration and registration drives. Completion and submission of forms shall not be made a course requirements or graded assignment for students, however.

Effective January 1, 2010.

Section 12. State and local agencies maintaining public records are guided by the Department of Cultural Resources records retention policy and schedule, unless statutory provisions provide otherwise. For voter registration records, county boards of election are required by statute to maintain a hard copy in a secure place. G.S. 163-82.10(a). ***The proposed committee substitute would change that provision to allow the State Board and county boards of election to keep voter registration records in any medium and format approved by the Department of Cultural Resources.***

Section 17. Currently, the State is participating in the 2010 Census Redistricting Data Program in order for the State to receive 2010 Census data by voting tabulation districts (precincts). The Executive Director of the State Board of Elections is required to report the voting tabulation districts as of January 1, 2008 to the Census Bureau, after consulting with the Legislative Services Office concerning the accuracy of the voting tabulation districts. ***The proposed committee substitute allows the Executive Director to make adjustments to those voting tabulation districts to assure accurate election administration and consistent reporting of election results from the precincts as they existed on January 1, 2008, and requires reporting by county boards of elections to be in accordance with the voting tabulation districts as modified.***

Section 22. **[House Bill 748, Rep. Ross and House Bill 908, Representative Goodwin]** Currently, a buffer zone is set around a voting place that is free from political signs, voter solicitation, or other electioneering. Generally, that buffer zone 50 feet, but it may between 25 feet and 50 feet, in some instances depending on the property. Adjacent to that buffer zone, an area where electioneering is permitted must be provided, unless the county board of elections gets special permission from the Executive Director of the State Board to enter into an agreement otherwise with the owners or managers of a nonpublic building used as a voting place. The Executive Director may approve the agreement only if no other suitable voting place can be secure, the chief judge of the precinct will be required to monitor the grounds to ensure equal enforcement, and there isn't a pattern of discrimination in the adoption of such agreements in precincts around the county. The law is silent about whether nonpolitical kinds of solicitation can occur around the voting place. ***Section 22 of the proposed committee substitute would require that when an agreement is entered into for an early voting place, the ability for that agreement must include an area for election related activity adjacent to the buffer zone . Effective January 1, 2010.***

Section 23. **[Senate Bill 718, Senator Clodfelter]** G.S. 163-129 permits county boards of election to demand and use, for voter registration, primary elections, or general elections any of the following facilities:

- Schools
- Other State, county, or municipal buildings, or a part thereof.
- Any other building, or a part thereof, which is supported or maintained, in whole or in part by or through tax revenues.

The county boards may require that the requisitioned premises, or a part thereof, be vacated for these purposes. The county boards may also require that those in control of the tax-supported building provide parking that is adequate for voters at the precinct, as determined by the county board of

elections. County boards are not permitted to demand and use any tax exempt church property for voting purposes without the express consent of the individual church involved. ***Section 23 of the proposed committee substitute would authorize a county board of election to demand and use any facility as a early voting site any facility that it could demand and use for election-day voting.***

Section 27. **[House Bill 908, Representative Goodwin]** A protest is filed with the county board of elections and may be appealed to the State Board of Elections. The decision of the State Board may be appealed to Superior Court. In the case of a General Assembly or Council of State seat, appeal is available in the form of an election contest, filed with the General Assembly or with the house where the seat is. ***Section 27 provides that attorney's fees may not be awarded against the State Board of Elections in an election protest.***

Section 30. **[House Bill 932, Representative Insko]** In 2006 the General Assembly authorized a pilot program to allow the use of Instant Runoff Voting in up to 10 cities in 2007 and in up to 10 counties in 2008. In 2008, the pilot program was extended for the years 2009, 2010, and 2011. The State Board of Elections selects the cities and counties from those where the county board of elections had already approved the idea. ***The proposed committee substitute would require the county or city in approving the idea to hold a public hearing on the pilot.***

Instant Runoff Voting is a method to allow voters to pick a winner by majority (or 40% plurality in partisan primaries), without having to go through the expense of a separate runoff. The State Board of Elections would choose the cities and counties from those where the county board of elections had already approved the idea. The method would be used only in party primaries and nonpartisan elections – not in partisan general elections. ***The proposed committee substitute would also clarify that the term "ranked choice voting" can be used as a substitute for "instant runoff voting".***

Section 31. ***The proposed committee substitute authorizes the Joint Legislative Elections Oversight Committee to study several bills and report back to the 2010 Short Session.***

EFFECTIVE DATE: Except as otherwise noted, effective when it becomes law. This act may not be implemented until the session law has received "preclearance" approval under Section 5 of the Voting Rights of 1965 by the U.S. Department of Justice.

H908-SMST-60(CSST-63) v3

Bill Gilkeson and Kara McCraw substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 209
Committee Substitute Reported Without Prejudice 3/25/09
Third Edition Engrossed 5/12/09

Short Title: Sex Offender Registry/Liberties w/Student. (Public)

Sponsors:

Referred to:

February 18, 2009

A BILL TO BE ENTITLED

AN ACT TO ADD THE OFFENSE OF TAKING INDECENT LIBERTIES WITH A STUDENT TO THE LIST OF SEX OFFENSES THAT REQUIRE REGISTRATION UNDER THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAM, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON SEX OFFENDER ISSUES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.6(5) reads as rewritten:

"(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex offense with a child; adult offender), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), ~~or~~ G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 2. This act becomes effective December 1, 2009, and applies to all persons convicted of a violation of G.S. 14-202.4 on or after that date, and to all persons released from a penal institution on or after that date.

HOUSE BILL 209:
Sex Offender Registry/Liberties w/Student

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	July 29, 2009
Introduced by:	Reps. Goforth, R. Warren, Glazier, Insko	**Prepared by:**	Susan Sitze* Committee Counsel
Analysis of:	Third Edition		

SUMMARY: ***House Bill 209 would add the felony offense of taking indecent liberties with a student to the list of sex offenses that require registration under the Sex Offender and Public Protection Registration Program, as recommended by the House Select Committee on Sex Offender Issues.***

CURRENT LAW: Article 27A of Chapter 14 provides programs for Sex Offender and Public Protection Registration. The stated purposes of the registration program are recognition by the General Assembly that sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and the paramount governmental interest in protection of the public from sex offenders.

Sex Offender and Public Protection Registration: G.S. 14-208.6(5) defines a sexually violence offense as a violation of one of a list of 23 crimes, including various degrees of rape, various degrees of sexual offense, sexual servitude, certain offenses against public morality and decency, including assistance of a minor in offenses against public morality and decency, felonious indecent exposure, incest, various degrees of sexual exploitation of a minor, crimes related to prostitution of minors, indecent liberties with children, solicitation of a child by computer to commit an unlawful sex act, and certain offenses related to sexual acts and prostitution committed by parents or guardians. The term also includes solicitation or conspiracy to commit any of the offenses, and aiding and abetting any of the offenses.

G.S. 14-208.6A requires individuals convicted of sexually violent offenses to register for 30 years with the Sex Offender and Public Protection Program.

- The sexually violent offender must register with the sheriff of the county where the person resides, provide required information, and update information regarding any changes to registration information.
- Registrants are not permitted to reside within 1,000 feet of a public or nonpublic school or child care center.
- Registrants are not permitted to work at any place where a minor is present and the registrant's duties would include instruction, supervision, or care of a minor.
- Registrants convicted of an Article 7A offense or an offense where the victim is under 16 are not permitted on the premises of places intended primarily for the use, care or supervision of minors; within 300 feet of a location intended primarily for the use, care, or supervision of minors located on premises used for other purposes (such as shopping centers); or any place where minors gather for regularly scheduled educational, recreational, or social programs.

Sex Offender Monitoring: Individuals convicted of a sexually violent offense who satisfy certain additional criteria may be ordered by the court to enroll in a satellite –based monitoring program.

G.S. 14-202.4 (Taking indecent liberties with a student) provides for two crimes:

Class I Felony: Certain defendants who take advantage of a student by taking indecent liberties are guilty of a Class I felony. Defendant must be one of the following: teacher, school administrator, student teacher, school safety officer, or coach at any age, or any other school personnel who is at least 4 years older than the victim. The offense must occur while the defendant and student are present together in the same school, but before the victim ceases to be a student.

Class A1 misdemeanor: A defendant who is school personnel and takes an indecent liberty with a student, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim is guilty of a Class A1 misdemeanor.

The text of G.S. 14-202.4 is set out in full below.

BILL ANALYSIS: House Bill 209 would add G.S. 14-202.4(a), the felony offense of taking indecent liberties with a student, to the list of crimes defined as sexually violent offenses in G.S. 14-208.6(5). Inclusion of the offense in this list would require individuals convicted under G.S. 14-202.4(a) to register under the Sex Offender and Public Registration Program.

EFFECTIVE DATE: This bill would become effective December 1, 2009, and would apply to all persons convicted of a violation of G.S. 14-202.4 on or after that date, and to all persons released from a penal institution on or after that date.

BACKGROUND: House Bill 209 is a recommendation of the House Select Committee on Sex Offender Issues.

§ 14-202.4. Taking indecent liberties with a student.

(a) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel and is at least four years older than the victim, takes indecent liberties with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school but before the victim ceases to be a student, the defendant is guilty of a Class I felony, unless the conduct is covered under some other provision of law providing for greater punishment. A person is not guilty of taking indecent liberties with a student if the person is lawfully married to the student.

(b) If a defendant, who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and who is less than four years older than the victim, takes indecent liberties with a student as provided in subsection (a) of this section, the defendant is guilty of a Class A1 misdemeanor.

(c) Consent is not a defense to a charge under this section.

(d) For purposes of this section, the following definitions apply:

(1) "Indecent liberties" means:

a. Willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying sexual desire; or

b. Willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student.

For purposes of this section, the term indecent liberties does not include vaginal intercourse or a sexual act as defined by G.S. 14-27.1.

(1a) "Same school" means a school at which (i) the student is enrolled or is present for a school-sponsored or school-related activity and (ii) the school personnel is employed, volunteers, or is present for a school-sponsored or school-related activity.

(2) "School" means any public school, charter school, or nonpublic school under Parts 1 and 2 of Article 39 of Chapter 115C of the General Statutes.

(3) "School personnel" means any person included in the definition contained in G.S. 115C-332(a)(2), and any person who volunteers at a school or a school-sponsored activity.

(3a) "School safety officer" means any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools and includes a school resource officer.

(4) "Student" means a person enrolled in kindergarten, or in grade one through grade 12 in any school.

**Kara McGraw, Drupti Chauhan, and Steve Rose, staff attorneys, substantially contributed to this summary.*

H209-SMSA-129(e3) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 4

HOUSE BILL 1135
Committee Substitute Favorable 6/3/09
Committee Substitute #2 Favorable 6/25/09
Fourth Edition Engrossed 6/29/09

Short Title: Qui Tam/Liability for False Claims. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO DETER AND PUNISH PERSONS WHO MAKE FALSE OR FRAUDULENT CLAIMS FOR PAYMENT BY THE STATE AND TO PROVIDE REMEDIES IN THE FORM OF TREBLE DAMAGES AND CIVIL PENALTIES WHEN MONEY IS OBTAINED FROM THE STATE BY REASON OF SUCH CLAIMS.

The General Assembly of North Carolina enacts:

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

"Article 52.
"False Claims Act.

"**§ 1-605. Short title; purpose.**

(a) This Article shall be known and may be cited as the False Claims Act.

(b) The purpose of this Article is to deter persons from knowingly causing or assisting in causing the State to pay claims that are false or fraudulent, and to provide remedies in the form of treble damages and civil penalties when money is obtained from the State by reason of a false or fraudulent claim.

"**§ 1-606. Definitions.**

The following words and phrases when used in this act have the following meanings, unless the context clearly indicates otherwise:

(1) "Attorney General." – The Attorney General of North Carolina, or any deputy, assistant, or associate attorney general.

(2) "Claim." – Any request or demand, whether under a contract or otherwise, for money or property and whether or not the State has title to the money or property that (i) is presented to an officer, employee or agent of the State or (ii) is made to a contractor, grantee or other recipient, if the money or property is to be spent or used on the State's behalf or to advance a State program or interest, and if the State government:

a. Provides or has provided any portion of the money or property that is requested or demanded; or

b. Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

A claim does not include requests or demands for money or property that the State has paid to an individual as compensation for State employment or as

an income subsidy with no restrictions on that individual's use of the money or property.

(3) "Judiciary." – A justice or judge of the General Court of Justice or clerk of court.

(4) "Knowing" and "knowingly." – Whenever a person, with respect to information, does any of the following:

a. Has actual knowledge of the information.

b. Acts in deliberate ignorance of the truth or falsity of the information.

c. Acts in reckless disregard of the truth or falsity of the information.

Proof of specific intent to defraud is not required.

(5) "Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.

(6) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(7) "Public employee," "public official," and "public employment" includes federal, State, and local employees and officials.

(8) "Senior executive branch official." – The Governor, Lieutenant Governor, member of the Council of State, or head of department as defined in G.S. 143B-3.

"**§ 1-607. False claims; acts subjecting persons to liability for treble damages; costs and civil penalties; exceptions.**

(a) Liability. – Any person who commits any of the following acts shall be liable to the State for three times the amount of damages that the State sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the State for the costs of a civil action brought to recover any of those penalties or damages, and shall be liable to the State for a civil penalty of not less than five thousand five hundred dollars ($5,500) and not more than eleven thousand dollars ($11,000) for each violation:

(1) Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval.

(2) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim.

(3) Conspires to commit a violation of subdivisions (1), (2), (4), (5), (6), or (7).

(4) Has possession, custody, or control of property or money used or to be used by the State and knowingly delivers or causes to be delivered less than all of that money or property.

(5) Is authorized to make or deliver a document certifying receipt of property used or to be used by the State and, intending to defraud the State, makes or delivers the receipt without completely knowing that the information on the receipt is true.

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the State who lawfully may not sell or pledge the property.

(7) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the State, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State.

(b) Damages Limitation. – Notwithstanding the provisions of subsection (a) of this section, the court may limit the damages assessed under subsection (a) of this section to not less than two times the amount of damages that the State sustains because of the act of the person

described in that subsection and may assess no civil penalty if the court finds all of the following:

(1) The person committing the violation furnished officials of the State who are responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information.

(2) The person fully cooperated with any investigation of the violation by the State.

(3) At the time the person furnished the State with information about the violation, no criminal prosecution, civil action, or administrative action has commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) Exclusion. – This section does not apply to claims, records, or statements made under Chapter 105 of the General Statutes.

"**§ 1-608. Civil actions for false claims.**

(a) Responsibilities of the Attorney General. – The Attorney General diligently shall investigate a violation under G.S. 1-607. If the Attorney General finds that a person has violated or is violating G.S. 1-607, the Attorney General may bring a civil action under this section against that person.

(b) Actions by Private Persons. – A person may bring a civil action for a violation of G.S. 1-607 or under G.S. 108A-70.12 for the person and for the State, as follows:

(1) The action shall be brought in the name of the State, and the person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be voluntarily dismissed by the person bringing the action only if the court and Attorney General have given written consent to the dismissal.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General pursuant to applicable rules of the North Carolina Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 120 days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within 120 days after it receives both the complaint and the material evidence and information.

(3) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subdivision (2) of this subsection. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 30 days after the complaint is unsealed and served upon the defendant pursuant to the North Carolina Rules of Civil Procedure.

(4) Before the expiration of the 120-day period or any extensions obtained under subdivision (3) of this subsection, the State shall:

a. Proceed with the action, in which case the action shall be conducted by the State; or

b. Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, the federal False Claims Act (31 U.S.C. § 3729 et seq.), or any similar provision of law in any other state, no person other than the State may intervene or bring a related action based on the facts underlying the pending action; provided

however that nothing in this subdivision prohibits a person from amending a pending action in another jurisdiction to allege a claim under this subsection.

(c) The Attorney General may retain a portion of the damages recovered for a State agency out of the proceeds of the action or settlement under this Article as reimbursement for costs incurred by the Attorney General in investigating and bringing a civil action under this Article, including reasonable attorneys fees and investigative costs. Retained funds shall be used by the Attorney General to carry out the provisions of this Article.

"**§ 1-609. Rights of the parties to qui tam actions.**

(a) If the State proceeds with an action under G.S. 1-608(b), it shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the qui tam plaintiff. The qui tam plaintiff shall have the right to continue as a party to the action, subject to the limitations set forth in subsections (b) through (e) of this section.

(b) The State may dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the State of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity for a hearing on the motion.

(c) The State may settle the action with the defendant notwithstanding the objections of the qui tam plaintiff if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be heard in camera.

(d) Upon a showing by the State that the qui tam plaintiff's unrestricted participation during the course of the litigation would interfere with or unduly delay the State's prosecution of the case or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

(1) Limiting the number of witnesses the qui tam plaintiff may call;

(2) Limiting the length of the testimony of those witnesses;

(3) Limiting the qui tam plaintiff's cross-examination of witnesses; or

(4) Otherwise limiting the participation by the qui tam plaintiff in the litigation.

(e) Upon a showing by the defendant that the qui tam plaintiff's unrestricted participation during the course of the litigation would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the qui tam plaintiff in the litigation.

(f) If the State elects not to proceed with the action, the qui tam plaintiff shall have the right to conduct the action. If the State so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the State's expense. When a qui tam plaintiff proceeds with the action, the court, without limiting the status and rights of the qui tam plaintiff, may permit the State to intervene at a later date upon a showing of good cause.

(g) Whether or not the State proceeds with the action, upon a showing by the State that certain actions of discovery by the qui tam plaintiff would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 120 days. Such a showing shall be conducted in camera. The court may extend the 120-day period upon a further showing in camera that the State has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigations or proceedings.

(h) Notwithstanding the provisions of G.S. 1-608(b), the State may elect to pursue its claim through any alternate remedy available to the State, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the qui tam plaintiff shall have the same rights in that proceeding as the qui tam plaintiff would have had if the action had continued under this section. Any finding of fact

or conclusion of law made in the other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the State, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

"**§ 1-610. Award to qui tam plaintiff.**

(a) Except as otherwise provided in this section, if the State proceeds with an action brought by a qui tam plaintiff under G.S. 1-608(b), the qui tam plaintiff shall, subject to subsection (b) of this section, receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action.

(b) Where the action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the qui tam plaintiff, relating to allegations or transactions (i) in a criminal, civil, or administrative hearing at the State or federal level, (ii) in a congressional, legislative, administrative, General Accounting Office, or State Auditor's report, hearing, audit, or investigation, or (iii) from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the qui tam plaintiff in advancing the case to litigation.

(c) Any payment to a qui tam plaintiff under subsection (a) or (b) of this section shall be made from the proceeds.

(d) The qui tam plaintiff shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(e) If the State does not proceed with an action under this Article, the qui tam plaintiff shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall not be less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of the proceeds. The qui tam plaintiff shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(f) Whether or not the State proceeds with the action, if the court finds that the qui tam plaintiff planned and initiated the violation of G.S. 1-607 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the qui tam plaintiff would otherwise receive under subsection (a), (b), or (e) of this section, taking into account the role of the qui tam plaintiff in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the qui tam plaintiff is convicted of criminal conduct arising from his or her role in the violation of G.S. 1-607, the qui tam plaintiff shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such a dismissal shall not prejudice the right of the State to continue the action.

(g) If the State does not proceed with the action and the qui tam plaintiff conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the qui tam plaintiff was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

"**§ 1-611. Certain actions barred.**

(a) No court shall have jurisdiction over an action brought under G.S. 1-608(b) against a member of the General Assembly, a member of the judiciary, or a senior executive branch official acting in their official capacity if the action is based on evidence or information known to the State when the action was brought.

(b) In no event may a person bring an action under G.S. 1-608(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the State is already a party.

(c) No civil action may be brought under this Article by a person who is or was a public employee or public official if the allegations of such action are substantially based upon either of the following:

(1) Allegations of wrongdoing or misconduct which such person had a duty or obligation to report or investigate within the scope of his or her public employment or office.

(2) Information or records to which the person had access as a result of his or her public employment or office.

(d) No court shall have jurisdiction over an action under G.S. 108A-70.12 based upon the public disclosure of allegations or transactions (i) in a criminal, civil, or administrative hearing at the State or federal level, (ii) in a congressional, legislative, administrative, General Accounting Office, or State Auditor's report, hearing, audit, or investigation, (iii) or from the news media, unless the action is brought by the Attorney General, or the person bringing the action is an original source of the information. For purposes of this section, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under G.S. 108A-70.12 that is based on the information.

"**§ 1-612. State not liable for certain expenses.**

The State is not liable for expenses that a person incurs in bringing an action under G.S. 1-608(b).

"**§ 1-613. Private action for retaliation action.**

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this Article, or in furtherance of other efforts to stop one or more violations of G.S. 1-607, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this Article, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status the employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in superior court for the relief provided in this section.

"**§ 1-614. Civil investigative demand.**

(a) A civil investigative demand is an administrative subpoena. Whenever the Attorney General has reason to believe that a person has information or is in possession, custody, or control of any document or other object relevant to an investigation or that would lead to the discovery of relevant information in an investigation of a violation of G.S. 1-607, the Attorney General may issue in writing and cause to be served upon the person, before bringing or intervening or making an election in an action under G.S. 1-608 or other false claims law, a civil investigative demand requiring the person to produce any documents or objects for their inspection and copying.

(b) The civil investigative demand shall:

(1) Be served upon the person in the manner required for service of process in civil actions and may be served by the Attorney General or investigator assigned to the North Carolina Department of Justice;

(2) Describe the nature of the conduct constituting the violation under investigation;

(3) Describe the class or classes of any documents or objects to be produced with sufficient definiteness to permit them to be fairly identified;

(4) Prescribe a reasonable date and time at which the person shall produce any document or object;

(5) Advise the person that objections to or reasons for not complying with the demand may be filed with the Attorney General on or before that date and time;

(6) Designate a person to whom any document or object shall be produced; and

(7) Contain a copy of subsections (b) and (c) of this section.

(c) The date within which any document or object must be produced shall be more than 30 days after the civil investigative demand has been served upon the person.

(d) A civil investigative demand may include an express demand for any product of discovery. A product of discovery includes the original or duplicate of any deposition, interrogatory, document, thing, examination, or admission, that is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature, and any digest, compilation, and index of any product of discovery. Whenever a civil investigative demand is an express demand for any product of discovery, a copy of the demand shall be served on the person from whom the discovery was obtained and shall notify the person to whom the demand is issued of the date on which the copy was served. A demand for a product of discovery shall not be returned or returnable until 30 days after a copy of the demand has been served on the person from whom the discovery was obtained. Any demand that is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law, other than this section, preventing or restraining disclosure of the product of discovery to any person. Disclosure of any product of discovery pursuant to any express demand does not constitute a waiver of any right or privilege that the person making the disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(e) The production of documents and objects in response to a civil investigative demand served under this section shall be made under a sworn certificate by the person to whom the demand is directed, or in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available. Upon written agreement between the person served with the civil investigative demand and the Attorney General, the person may substitute copies for originals of all or any part of the documents requested.

(f) If a person objects to or otherwise fails to comply with a civil investigative demand served upon the person under subsection (a) of this section, the Attorney General may file an action in superior court for an order to enforce the demand. Venue for the action to enforce the demand shall be in either Wake County or the county in which the person resides, is found, or transacts business. Notice of a hearing on the action to enforce the demand and a copy of the action shall be served upon the person in the same manner as prescribed in the Rules of Civil Procedure. If the court finds that the demand is proper, that there is reasonable cause to believe that there may have been a violation of G.S. 1-607, and that the information sought or document or object demanded is relevant to the violation, the court shall order the person to comply with the demand, subject to modifications the court may prescribe.

(g) If the person fails to comply with an order entered pursuant to subsection (f) of this section, the court may:

(1) Adjudge the person to be in contempt of court;

(2) Grant injunctive relief against the person to whom the demand is issued to restrain the conduct which is the subject of the investigation; or

(3) Grant any other relief as the court may deem proper.

(h) Any person who has received a civil investigative demand issued under this section or, in the case of an express demand for any product of discovery, the person from whom discovery was obtained may file and serve on the investigator identified in the demand, a petition for an order of the court to modify or set aside the demand. The petition may be filed in superior court in either Wake County or the county in which the person resides, is found, or transacts business, or, in the case of a petition to modify an express demand for any product of discovery, the petition shall be filed only in the court in which the proceeding in which the discovery was obtained or was last pending. Any petition under this subsection must be filed within 30 days after the date of service of the civil investigative demand or before the return date specified in the demand, whichever date is earlier, or within a longer period as may be prescribed in writing by the investigator identified in the demand. The petition shall specify each ground upon which the petitioner relies in seeking relief and may be based upon any failure to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(i) Any documents and objects produced pursuant to this section may be used in connection with any civil action brought under G.S. 1-608 and for any use that is consistent with the law, and the regulations and policies of the Attorney General, including use in connection with internal Attorney General memoranda and reports; communications between the Attorney General and a Federal, State, or local governmental agency, or a contractor of a Federal, State, or local governmental agency, undertaken in furtherance of an Attorney General investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding applications, motions, memoranda and briefs submitted to a court or other tribunal; and communications with government investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and mediators, concerning an investigation, case or proceeding. Any documents and objects obtained by the Attorney General under this section may be shared with any qui tam relator if the Attorney General determines it is necessary as part of any false claims act investigation. Before using or sharing documents and objects obtained by the Attorney General under this section with any person, the Attorney General may require that the person agree to an order of the court protecting the documents or objects, or any information contained in the documents or objects, from disclosure by that person. In the case of documents or objects the court has designated as confidential business, trade secrets or personal information, the Attorney General shall require that the person with whom documents or objects are shared be prohibited from disclosing the documents or objects, or any information contained in the documents or objects.

(j) The Attorney General may designate an employee of the North Carolina Department of Justice to serve as a custodian of documents and objects.

(k) Except as otherwise provided in this section, no documents or objects, or copies thereof, while in the possession of the North Carolina Department of Justice, shall be available for examination by any person other than an employee of the North Carolina Department of Justice. The prohibition in the preceding sentence on the availability of documents or objects, shall not apply if consent is given by the person who produced the documents or objects, or, in the case of any product of discovery produced pursuant to an express demand, consent is given by the person from whom the discovery was obtained, or prevent disclosure to any other federal or State agency for use by that agency in furtherance of its statutory responsibilities upon application made by the Attorney General to the superior court showing substantial need for the use of the documents or objects by any agency in furtherance of its statutory responsibilities.

(l) While in the possession of the custodian and under reasonable terms and conditions as the Attorney General shall prescribe, documents or objects shall be available for examination by the person who produced the documents or objects, or by a representative of that person authorized by that person to examine the documents or objects.

(m) If any documents or objects have been produced by any person in the course of any investigation pursuant to a civil investigative demand under this section, and any case or proceeding before any court arising out of the investigation, or any proceeding before any agency involving the documents or objects, has been completed, or no case or proceeding in which the documents or objects may be used has been commenced within a reasonable time after completion of the investigation, the custodian shall, upon written request of the person who produced the documents or objects, return to the person any documents or objects that have not passed into the control of any court or agency.

(n) The North Carolina Rules of Civil Procedure shall apply to this section to the extent that the rules are not inconsistent with the provisions of this section.

"**§ 1-615. False claims procedure.**

(a) Statute of Limitations. – A civil action under G.S. 1-608 may not be brought (i) more than six years after the date on which the violation of G.S. 1-607 was committed or (ii) more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the State of North Carolina charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

(b) If the Attorney General elects to intervene and proceed with an action brought under G.S. 1-608(b), the State may file its own complaint or amend the complaint of a person who has brought an action under G.S. 1-608(b) to clarify or add detail to the claims with respect to which the State is intervening and to add any additional claims with respect to which the State contends it is entitled to relief. For statute of limitations purposes, any such State pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the State arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(c) Burden of Proof. – In any action brought under G.S. 1-608, the State or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Estoppel. – Notwithstanding any other provision of law, a final judgment rendered in favor of the State in a criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and which is brought under G.S. 1-608.

(e) Venue. – Venue for any action brought pursuant to G.S. 1-608 shall be in either Wake County or in any county in which a claim originated, or in which any statement or record was made, or acts done, or services or property rendered in connection with any act constituting part of the violation of this Article.

(f) Service on Federal, State, or local authorities. – With respect to the United States or any State or local government that is named as a co-plaintiff in an action brought under G.S. 1-608, a seal on the action ordered by the court under G.S. 1-608(b) shall not preclude the State or the person bringing the action from serving the complaint, any other pleadings, or the written disclosure of substantially all material evidence and information possessed by the person bringing the action on the law enforcement authorities that are authorized under the law of the United States, that State or local government to investigate and prosecute such actions on behalf of such governments, except that such seal applies to the law enforcement authorities so served to the same extent as the seal applies to other parties in the action.

(g) A civil action may not be brought under both this Article and Part 7 of Article 2 of Chapter 108A of the General Statutes.

"**§ 1-616. Remedies under other laws; severability of provisions; liberality of legislative construction; adoption of legislative history.**

(a) Remedies Under Other Laws. – The provisions of this Article are not exclusive, and the remedies provided for in this Article shall be in addition to any other remedies provided for in any other law or available under common law. No criminal or administrative action need be brought against any person as a condition for establishing civil liability under this section.

(b) If any provision of this Article or the application of this Article to any person or circumstance is held to be unconstitutional, the remainder of this Article and the application of the provision to other persons or circumstances shall not be affected by that holding.

(c) This Article shall be interpreted and construed so as to be consistent with the federal False Claims Act, 31 U.S.C. § 3729, et seq., and any subsequent amendments to that act.

"**§ 1-617. Reporting.**

(a) In reporting on the terms and disbursements set forth in any settlement agreement or final order or judgment in a case filed under this Article as required by G.S. 114-2.5, the report shall include the percentage of the proceeds and the amount paid to any qui tam plaintiff under G.S. 1-610.

(b) On or before February 1 of each year, the Attorney General shall submit to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the House of Representatives and the Senate a report on the number of qui tam cases under this Article pending in the State and the number of qui tam cases pending in other jurisdictions involving the State during the previous calendar year.

"**§ 1-618. Rules.**

The Attorney General may adopt rules necessary to carry out the purposes set forth in this Article."

SECTION 2. Part 6 of Article 2 of Chapter 108A of the General Statutes is amended by adding a new section to read:

"**§ 108A-63.1. Health care fraud subpoena to produce documents.**

(a) The Attorney General, acting through the Medicaid Investigations Unit of the Department of Justice, may, when engaged in an investigation of an alleged violation of G.S. 108A-63 and prior to the arrest of a suspect, issue in writing and cause to be served a subpoena to produce documents upon any corporation or governmental entity requiring the production of any records, books, papers, electronic media, objects, or other documents which may be relevant to a criminal investigation of a violation of G.S. 108A-63.

(b) A subpoena under this section may require the custodian of records of the corporation or governmental entity to produce an affidavit certifying that the custodian made a thorough and diligent search for the documents requested and that the documents produced constitute all the records requested to the best of the custodian's knowledge, information, and belief.

(c) A subpoena under this section shall describe the documents required to be produced and prescribe a return date within a reasonable period of time, of no less than 20 days from the date of service, within which the documents can be assembled and made available.

(d) A corporation or governmental entity may comply with a subpoena issued under this section by delivering the documents to the Medicaid Investigations Unit:

(1) By hand delivery;

(2) By mailing the documents by certified mail;

(3) By making the documents reasonably available for transfer to an agent of the Medicaid Investigations Unit at a place of business of the corporation or governmental entity; or

(4) If agreed to by the Medicaid Investigations Unit and the corporation or governmental entity, by any other means.

(e) A corporation or governmental entity may move to quash or modify a subpoena issued under this section if it is oppressive or unreasonable or does not comply with the requirements of this section. The motion must be made before the time specified in the subpoena for production and may be made before a judge of the superior court.

(f) In the case of failure by any corporation or governmental entity without adequate excuse to obey a subpoena issued under this section, the Attorney General may invoke the aid of a judge of the superior court. The court may issue an order requiring the subpoenaed corporation or governmental entity to appear before the Attorney General to produce records. Failure to obey the order of the court may be punished as contempt of court."

SECTION 3. G.S. 108A-63 reads as rewritten:

"**§ 108A-63. Medical assistance provider fraud.**

(a) It shall be unlawful for any provider of medical assistance under this Part to knowingly and willfully make or cause to be made any false statement or representation of a material fact:

(1) In any application for payment under this Part, or for use in determining entitlement to such payment; or

(2) With respect to the conditions or operation of a provider or facility in order that such provider or facility may qualify or remain qualified to provide assistance under this Part.

(b) It shall be unlawful for any provider of medical assistance to knowingly and willfully conceal or fail to disclose any fact or event affecting:

(1) His initial or continued entitlement to payment under this Part; or

(2) The amount of payment to which such person is or may be entitled.

(c) ~~Any~~Except as otherwise provided in subsection (e) of this section, any person who violates a provision of this section shall be guilty of a Class I felony.

(d) "Provider" shall include any person who provides goods or services under this Part and any other person acting as an employee, representative or agent of such person.

(e) In connection with the delivery of or payment for benefits, items, or services under this Part, it shall be unlawful for any provider of medical assistance under this Part to knowingly and willfully execute, or attempt to execute, a scheme or artifice to:

(1) Defraud the Medical Assistance Program.

(2) Obtain, by means of false or fraudulent pretenses, representations, or promises of material fact, any of the money or property owned by, or under the custody or control of, the Medical Assistance Program.

A violation of this subsection is a Class H felony. For the purposes of this subsection, "scheme" includes a plan or course of action.

(f) It shall be unlawful for any provider, with the intent to obstruct, delay, or mislead an investigation of a violation of this section by the Attorney General's Office, to knowingly and willfully make or cause to be made a false entry in, alter, destroy, or conceal, or make a false statement about a financial, medical, or other record related to the provision of a benefit, item, or service under this Part."

SECTION 4. Sections 1 of this act becomes effective January 1, 2010 and applies to acts committed and actions filed on or after that date. A civil action may be filed after January 1, 2010 under Section 1 of this act based on acts committed prior to that date if the activity would also be covered under Part 7 of Article 2 of Chapter 108A of the General Statutes and if the limitation period set forth in G.S. 1-615(a) and 108A-70.13 has not lapsed. The remainder of this act becomes effective July 1, 2009.

HOUSE BILL 1135:
Qui Tam/Liability for False Claims

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	July 20, 2009
Introduced by:	Reps. Ross, Hall, Glazier, Martin	**Prepared by:**	R. Erika Churchill
Analysis of:	Fourth Edition		Committee Counsel

SUMMARY: ***House Bill 1135 creates a new Article entitled the False Claims Act, which is intended to deter persons from submitting or assisting in the submission of false claims to the State. The bill makes the penalty for obtaining money by false claims three times the amount of damages plus costs and civil penalties. The bill also authorizes private persons to file an action on behalf of the person and the State and to share in any proceeds under certain circumstances.***

Section 2 adds a new section to the law allowing the Attorney General to issue subpoenas to produce records to corporations or other entities in connection with criminal investigations of health care providers.

Section 3 amends existing law to make it a Class H felony for a provider to defraud Medicaid.

CURRENT LAW:

Under current law, a person would be guilty of the crime of obtaining property by false pretenses if the person makes a false representation of fact or a future event that is calculated and intended to deceive another person and in fact deceives another person, and the defendant thereby obtains money or property from the other person. Obtaining property by false pretenses is punishable as a Class H felony or a Class C felony if the property taken is $100,000.00 or more.

If a false representation has been made and has in fact deceived another person, but the defendant has not gained possession of the property, the crime has not occurred.

G.S. 108A-63 makes it a Class I felony for a Medicaid provider to make false representations on an application to determine eligibility or to conceal or fail to disclose facts affecting continued eligibility or the amount of payments.

BILL ANALYSIS:

House Bill 1135 adds a new Article to the Civil Procedure Law, entitled 'False Claims Act.' The act includes the following provisions:

- Creates a civil remedy against persons who knowingly cause or conspire to cause the payment or approval for payment of a false or fraudulent claim by the State. Such person is liable for treble damages plus the costs of the action and the Attorney General's investigation. In addition, the person is liable for a civil penalty of not less than $5,000 or more than $11,000 for each violation.
- Authorizes a private person to bring a civil action for a violation of this section in the name of the State and the individual who is known as the qui tam plaintiff. The complaint must be served on the Attorney General who may elect to intervene in the case. The complaint is kept under seal for 120 days and may not be served on the defendant until the court orders. The Attorney General also has an independent duty to investigate potential violations and may bring an action under the section.

- Authorizes the State to limit the participation of a qui tam plaintiff, if the State proceeds with the action. If the action is successful, the qui tam plaintiff may receive at least 15% but not more than 25% of the proceeds of the action, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action. If the action was based primarily on disclosures of specific information from specified sources (civil or criminal hearings, governmental reports or hearings, or the news media) other than the qui tam plaintiff, the qui tam plaintiff can receive no more than 10% of the proceeds. If the State does not proceed with the action, and the action is successful, the plaintiff may be awarded between 25% and 30% of the proceeds. If the qui tam plaintiff proceeds with an action and it is unsuccessful, the defendant may be awarded attorneys' fees and expenses if the court finds that the case was frivolous or that the plaintiff's purpose was harassment.
- Bars certain actions, including those based on public disclosure of information in a criminal, civil, or administrative hearing, or a legislative, GAO, or State Auditor report or investigation, unless the action is brought by the Attorney General or by the person who was the "original source" of the information.
- Authorizes the Attorney General to issue civil investigative demands for the production of document or other objects relevant to an investigation. The Attorney General may enforce a civil investigative demand in superior court.
- Establishes the procedure for false claim actions. The statute of limitation is the later of 6 years after the violation was committed, or 3 years after the facts are known or should have been known, but in no event more than 10 years after the violation was committed. The State and/or the qui tam plaintiff have the burden of proving the case by a preponderance of the evidence. If the State is intervening, the complaint shall relate back to the filing of the original complaint by the private person for the purposes of the statute of limitations.
- Requires reporting of qui tam cases involving the State to be reported by the Attorney General annually to the Joint Legislative Commission on Governmental Operations.

Section 2 of the bill adds a new section to the law governing Medicaid fraud cases. The section authorizes the Attorney General to issue subpoenas to produce documents to any corporation or government entity with information relevant to a criminal investigation. The subpoena may require the custodian of records of the corporation or governmental entity to certify that all available records have been provided. Failure to respond to the subpoena can be punished as a contempt of court.

Section 3 amends the law governing Medicaid provider fraud by adding language making it a Class H felony to obtain money or property by false pretenses. The section also makes it unlawful to obstruct an investigation or to conceal, alter or destroy records with the intent to defraud.

EFFECTIVE DATE: Section 1 becomes effective January 1, 2010 and applies to acts committed and actions filed on or after that date. A civil action may be filed after January 1, 2010 based on acts committed prior to that date if the activity would also be covered under Part 7 of Article 2 of Chapter 108A (Medicaid fraud). The remainder of the act becomes effective July 1, 2009.

*This summary was substantially contributed to by Tim Hovis and Karen Cochrane-Brown, Staff Attorneys.

SENATE JUDICIARY I COMMITTEE
(Civil)

August 4, 2009
10:00 a.m. – Room 1027

MINUTES

The Senate Judiciary I Committee met Tuesday, August 4, 2009, at 10:00 a.m. in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin Nesbitt, Vice-Chairmen, Dan Clodfelter, Pete Brunstetter, R.C. Soles, and Josh Stein; members, Senators Charlie Albertson, Phil Berger, Dan Blue, Andrew Brock, Harry Brown, Malcolm Graham, David Hoyle, Clark Jenkins, Ellie Kinnaird, Floyd McKissick, Tony Rand, David Rouzer and Jerry Tillman; Staff Counsel Erika Churchill, Giles Perry, Susan Sitze, and Bill Patterson; Committee Assistants Jan Lee, and Jessica Bennett.

Chairman Nesbitt called the meeting to order and recognized Representative Stam to explain H.B. 104 – LEC Term Changes/Ethics Training. He explained the bill and passed out a Proposed Committee Substitute for H.B. 104 and it was adopted for discussion. Staff Counsel Erika Churchill explained the PCS and after questions and discussion by the committee members Senator Rand moved to give the PCS for H.B. 104 a favorable report and unfavorable to the original bill and it passed.

Chairman Nesbitt recognized Senator Brunstetter to explain H.B. 817 – Establish NC Financial Literacy Council. A Proposed Senate Committee Substitute for H.B. 817 was distributed to the committee members and adopted for discussion. Staff Counsel Erica Churchill explained the Senate PCS for H.B. 817. After questions and discussion Senator Brunstetter sent forth an amendment and it passed. Senator Brunstetter sent forth a second amendment and withdrew it. Senator Brunstetter sent forth a third amendment and it passed. Senator Albertson sent forth an amendment and it was adopted and passed. Senator Jenkins moved that the amendments be rolled into a new Senate Proposed Committee Substitute and it be given a favorable report and unfavorable to the original bill. It passed unanimously.

Chairman Nesbitt presented H.B. 806 – Notice on Liens for HOA Assessments and distributed a Proposed Senate Committee Substitute for H.B. 806. He recognized Senator Stein to explain two technical amendments. Senator Stein moved for the adoption of the amendments and they passed. This bill went to a subcommittee for study and Senator Stein explained the changes made to the bill. Representative Weiss bill sponsor was recognized and thanked the subcommittee for changes made to the bill. Senator Stein moved to roll the amendments into a new Senate PCS and give it a favorable report and unfavorable to the original bill. It passed unanimously.

Chairman Nesbitt presented H.B. 1329 – Consolidate Expunction Statutes. It was not ready and was displaced to be taken up later.

Copies of H.B. 104, PSCS for H.B. 104, Bill Analysis of PCS for H.B 104; H.B. 817, PSCS for H.B. 817, Bill Analysis for PCS for 817, Amendments 1,2,3,4, H.B. 806, PSCS for H.B. 806, Amendments 1,2 for H.B. 806 are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 respectively.

Respectfully Submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W. Lee

Janette W. Lee
Committee Assistant

Juliana Proctor (Sen. Nesbitt)

Subject: Senate Judiciary I Committee Meeting Notice- Tuesday, 8 4 90 at 10:00 am in Rm 1027.

Principal Clerk x
Reading Clerk x

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Tuesday	August 4, 2009	10:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 104	LEC Term Changes/Ethics Training.	Representative Lucas Representative Stam Representative Glazier Representative McGee
HB 806	Notice on Liens for HOA Assessments.	Representative Earle Representative Weiss Representative Cotham Representative Glazier
HB 817	Establish NC Financial Literacy Council.	Representative Howard Representative Glazier Representative Tillis Representative Wainwright
HB 1111	Campaign Finance Amendments.	Representative Goodwin
HB 1312	Omnibus Highway/MV Statute Changes.	Representative Martin
HB 1329	Consolidate Expunction Statutes.	Representative Bordsen Representative Adams Representative Bryant Representative Moore

Senator Martin L. Nesbitt, Chair

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 104*
Committee Substitute Favorable 2/26/09

Short Title: LEC Term Changes/Ethics Training. (Public)

Sponsors:

Referred to:

February 11, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR FOUR-YEAR STAGGERED TERMS OF OFFICE FOR MEMBERS OF THE LEGISLATIVE ETHICS COMMITTEE AND TO AMEND THE TIMING OF ETHICS TRAINING FOR LEGISLATORS AS RECOMMENDED BY THE LEGISLATIVE ETHICS COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 120-99 reads as rewritten:

"**§ 120-99. Creation; composition.**

(a) The Legislative Ethics Committee is created and shall consist of 12 members, six Senators appointed by the President Pro Tempore of the Senate, ~~among them three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader,~~ and six members of the House of Representatives appointed by the Speaker of the ~~House, among them three from a list of six submitted by the Majority Leader and three from a list of six submitted by the Minority Leader.~~ House. The President Pro Tempore of the Senate shall appoint three members from a list of nominees submitted by the majority leader of the Senate and three members from a list of nominees submitted by the minority leader of the Senate. The Speaker of the House shall appoint three members from a list of nominees submitted by the majority leader of the House and three members from a list of nominees submitted by the minority leader of the House. The nominating majority or minority leader shall submit to the person making the appointment a list of twice the number of vacancies on the Committee that are to be filled from that leader's nominees.

(b) The President Pro Tempore of the Senate and the Speaker of the House as the appointing officers shall each designate a cochair of the Legislative Ethics Committee from the respective officer's ~~appointees.~~appointees to serve as cochair for the current General Assembly, and until the cochair's successor is designated. The cochair appointed by the President Pro Tempore of the Senate shall preside over the Legislative Ethics Committee during the odd-numbered year, and the cochair appointed by the Speaker of the House shall preside in the even-numbered year. ~~However, a~~ A cochair may preside at anytime during the absence of the presiding cochair or upon the presiding cochair's designation. In the event a cochair is unable to act as cochair on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the respective officer shall designate from that officer's appointees a member to serve as cochair for that specific matter.

(c) Repealed by Session Laws 2006-201, s. 8, effective January 1, 2007.

(d) The appointments of the President Pro Tempore of the Senate and the Speaker of the House shall ensure that the composition of the Legislative Ethics Committee is bipartisan in equal numbers."

SECTION 2. G.S. 120-100 reads as rewritten:

"**§ 120-100. Term of office; vacancies.**

(a) Appointments to the Legislative Ethics Committee shall be made immediately after the convening of the regular session of the General Assembly in odd-numbered ~~years, and appointees shall serve until the expiration of their then current terms as members of the General Assembly.~~years. The term of office for members of the Legislative Ethics Committee shall be four years from the date of the convening of the General Assembly in which the member is appointed to the Committee. Members shall not serve two consecutive full terms.

(b) A vacancy occurs on the Legislative Ethics Committee when a member resigns or is no longer a member of the General Assembly. A vacancy occurring for any reason during a term shall be filled for the unexpired term by the authority making the appointment which caused the vacancy, and the person appointed to fill the vacancy shall, if possible, be a member of the same political party as the member who caused the ~~vacancy.~~vacancy, from a list of two nominees submitted by that party's leader.

(c) In the event a member of the Legislative Ethics Committee is unable to act on a specific matter before the Legislative Ethics Committee, and so indicates in writing to the appointing officer and the Legislative Ethics Committee, the appointing officer may appoint another member of the respective chamber from a list of two members submitted by the majority leader or minority leader who nominated the member who is unable to act on the matter to serve as a member of the Legislative Ethics Committee for the specific matter only. If on any specific matter, the number of members of the Legislative Ethics Committee who are unable to act on a specific matter exceeds four members, the appropriate appointing officer shall appoint other members of the General Assembly to serve as members of the Legislative Ethics Committee for that specific matter only."

SECTION 3. Notwithstanding G.S. 120-100(a) as amended in Section 2 of this act, legislators appointed as members of the Legislative Ethics Committee for the 2009 General Assembly shall serve initial terms as follows:

(1) Two senators appointed by the President Pro Tempore of the Senate upon the recommendation of the minority leader of the Senate and one senator appointed by the President Pro Tempore of the Senate upon the recommendation of the majority leader of the Senate shall be designated by the President Pro Tempore as having a term of two years. Two senators appointed by the President Pro Tempore of the Senate upon the recommendation of the majority leader of the Senate and one senator appointed by the President Pro Tempore of the Senate upon the recommendation of the minority leader of the Senate shall be designated by the President Pro Tempore as having a term of four years.

(2) Two representatives appointed by the Speaker of the House upon the recommendation of the minority leader of the House and one representative appointed by the Speaker of the House upon the recommendation of the majority leader of the House shall be designated by the Speaker as having a term of two years. Two representatives appointed by the Speaker of the House upon the recommendation of the majority leader of the House and one representative appointed by the Speaker of the House upon the recommendation of the minority leader of the House shall be designated by the Speaker as having a term of four years.

SECTION 4. G.S. 138A-14(c) reads as rewritten:

"(c) The Commission, jointly with the Committee, shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment, or employment and shall offer periodic refresher presentations as the Commission and the Committee deem appropriate. Every legislator ~~and legislative employee~~

shall participate in an ethics presentation approved by the Commission and Committee within ~~three~~ two months of either the convening of the General Assembly to which the legislator is elected or within two months of the legislator's appointment, whichever is later. ~~legislative employee's election, reelection, appointment, or~~Every legislative employee shall participate in an ethics presentation approved by the Commission and Committee within three months of employment, and ~~every legislative employee~~ shall attend refresher ethics education presentations at least every two years thereafter, in a manner as the Commission and Committee deem appropriate."

SECTION 5. This act is effective when it becomes law

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 104*
Committee Substitute Favorable 2/26/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H104-PCS80499-ST-72

Short Title: Clarify Legislative Confidentiality. (Public)

Sponsors:

Referred to:

February 11, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY LEGISLATIVE CONFIDENTIALITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 17 of Chapter 120, as amended by S.L. 2009-129, reads as rewritten:

"Article 17.

"Confidentiality of Legislative Communications.

"§ 120-129. Definitions.

As used in this Article:

(1) "Document" means all records, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material regardless of physical form or characteristics.

(1a) "Legislative commission" means any commission or committee which the Legislative Services Commission is directed or authorized to staff by law or resolution and which it does, in fact, staff.

(2) "Legislative employee" means employees and officers of the General Assembly, consultants and counsel to members and committees of either house of the General Assembly or of legislative commissions who are paid by State funds, students at an accredited law school while in an externship program at the General Assembly approved by the Legislative Services Commission, and employees of the School of Government at the University of North Carolina at Chapel Hill; but does not mean legislators and members of the Council of State.

(3) "Legislator" means a member-elect, member-designate, or member of the North Carolina Senate or House of Representatives.

"§ 120-130. Drafting and information requests to legislative ~~employees.~~employees; constituent inquiries.

(a) A drafting request made to a legislative employee from a legislator is confidential. Neither the identity of the legislator making the request nor, except to the extent necessary to answer the request, the existence of the request may be revealed to any person who is not a legislative employee without the consent of the legislator.

(b) An information request made to a legislative employee from a legislator is confidential. Neither the identity of the legislator making the request nor, except to the extent necessary to answer the request, the existence of the request may be revealed to any person who is not a legislative employee without the consent of the legislator. Notwithstanding the preceding sentences of this subsection, the periodic publication by the Fiscal Research Division of the Legislative Services Office of a list of information requests is not prohibited, if the identity of the legislator making the request is not revealed.

(c) ~~Any~~ Documents submitted to a legislator by another person or any supporting documents submitted ~~or caused to be submitted~~ to a legislative employee by a legislator in connection with a drafting or information request are confidential. Except to the extent necessary to answer the request, neither the document nor copies of it, nor the identity of the person, firm, or association producing it, may be provided to any person who is not a legislative employee without the consent of the legislator.

(d) Drafting requests, ~~or~~ information ~~requests or~~ requests, and ~~supporting~~ documents submitted under subsection (c) of this section are not "public records" as defined by G.S. 132-1. A document that is a public record shall continue to be treated as a public record, notwithstanding its inclusion as a supporting document to a drafting or information request.

"§ 120-131. Documents produced by legislative employees.

(a) Documents prepared by legislative employees upon the request of legislators are confidential. Except as provided in subsection (b) of this section, the existence of the document may not be revealed nor may a copy of the document be provided to any person who is not a legislative employee without the consent of the legislator.

(b) A document prepared by a legislative employee upon the request of a legislator becomes available to the public when the document is a:

(1) Bill or resolution and it has been introduced;

(2) Proposed amendment or committee substitute for a bill or resolution and it has been offered at a committee meeting or on the floor of a house;

(3) Proposed conference committee report and it has been offered at a joint meeting of the conference committees; or

(4) Bill, resolution, memorandum, written analysis, letter, or other document resulting from a drafting or information request and it has been distributed at a legislative commission or standing committee or subcommittee meeting not held in executive session, closed session, or on the floor of a house.

(b1) A document prepared by a legislative employee upon the request of any legislator, that pursuant to this Article does not become available to the public, is not a "public record," as defined by G.S. 132-1.

(c) This section does not prohibit the dissemination of information or language contained in any document which has been prepared by a legislative employee in response to a substantially similar request from another legislator, provided that the identity of the requesting legislator and the fact that ~~he~~ the legislator had made such a request not be divulged.

"§ 120-131.1. Requests from legislative employees for ~~assistance in the preparation of fiscal notes and evaluation reports.~~assistance.

(a) A request, including any ~~accompanying~~ supporting documents, made to an agency employee by a legislative employee of the Fiscal Research Division for assistance in the preparation of a fiscal note is confidential. An agency employee who receives such a request or who learns of such a request made to another agency employee ~~of his or her agency~~ shall reveal the existence of the request only to other agency employees of the agency to the extent that it is necessary to respond to the request, and to the agency employee's supervisor and to the Office of State Budget and Management. All documents prepared by the agency employee in response to the request of the Fiscal Research Division are also confidential and shall be kept confidential in the same manner as the original request, except that documents submitted to the

Fiscal Research Division in response to the request cease to be confidential under this section when the Fiscal Research Division releases a fiscal note based on the documents.

(a1) A request, and any ~~accompanying~~ supporting documents, made to an agency employee by a legislative employee of the Program Evaluation Division for assistance in the preparation of an evaluation report is confidential. The request and any ~~accompanying~~ supporting documents are not "public records" as defined by G.S. 132-1. An agency employee who receives a request under this subsection or who learns of such a request made to another agency employee ~~of his or her agency~~ may reveal the existence of the request to other agency employees to the extent that it is necessary to respond to the request and to the agency employee's supervisor. All documents prepared by the agency employee in response to the request of a legislative employee of the Program Evaluation Division are confidential, shall be kept confidential in the same manner as the original request, and are not "public records" as defined in G.S. 132-1.

(a2) A request, and any supporting documents, made to an agency employee by a legislative employee pursuant to G.S. 120-130 or G.S. 120-131 is confidential. An agency employee who receives such a request or who learns of such a request made to another agency employee shall reveal the existence of the request only to other agency employees of the agency to the extent that it is necessary to respond to the request and to the agency employee's supervisor. All documents prepared by the agency employee in response to the request of a legislative employee under this subsection are also confidential and shall be kept confidential in the same manner as the original request. The request, any supporting documents to the request, and any documents prepared by the agency employee in response to a request under this subsection are not "public records" as defined by G.S. 132-1.

(a3) Requests and documents confidential under this section shall bear an indication on the face of the request or document that the request or document is confidential and not a public record pursuant to this section.

(b) As used in this section, "agency employee" means an employee or officer of every agency of North Carolina government or its subdivisions, including every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district, or other political subdivision of government.

(c) Violation of this section ~~may be grounds for disciplinary action.~~shall be subject to penalties as set forth in G.S. 120-134.

"§ 120-132. Testimony by legislative employees.

(a) Except as provided in subsections (b) and (c) of this section, ~~No~~ no present or former legislative ~~employees~~ employee may ~~be required to~~ disclose any information that the individual, while employed or retained by the State, may have acquired:

(1) In a standing, select, or conference committee or subcommittee of either house of the General Assembly or a legislative commission;

(2) On the floor of either house of the General Assembly, ~~or~~ in any office of a ~~legislator;~~ legislator, or at any other location of the State legislative buildings and grounds as defined in G.S. 120-32.1(d);

(3) As a result of communications that are confidential under G.S. 120-130 and G.S. 120-131.

(b) A present or former legislative employee may disclose information acquired under subsection (a) of this section that would be reflected in the official public record or was otherwise publicly disseminated.

(c) ~~Notwithstanding the provisions of the preceding sentence,~~ Subject to G.S. 120-9, G.S. 120-133, and the common law of legislative immunity, the presiding judge ~~of a court of competent jurisdiction~~ may compel ~~that disclosure,~~ disclosure of information acquired under

subsection (a) of this section if in ~~his~~ the judge's opinion, the ~~same~~ disclosure is necessary to a proper administration of justice.

"**§ 120-133. Redistricting communications.**

Notwithstanding any other provision of law, all drafting and information requests to legislative employees and documents prepared by legislative employees for legislators concerning redistricting the North Carolina General Assembly or the Congressional Districts are no longer confidential and become public records upon the act establishing the relevant district plan becoming law. Present and former legislative employees may be required to disclose information otherwise protected by G.S. 120-132 concerning redistricting the North Carolina General Assembly or the Congressional Districts upon the act establishing the relevant district plan becoming law.

"**§ 120-134. Penalty.**

Violation of any provision of this Article shall be grounds for disciplinary action in the case of current legislative employees, ~~for referral to the academic institution for appropriate discipline in the case of law student externs,~~ and for removal from office in the case of public officers. Violation of any provisions of this Article by a current legislative employee who is a law student extern shall be referred to the academic institution for appropriate discipline, and the Legislative Services Commission may terminate the externship. Any other person who willfully violates any provision of this Article shall be guilty of a Class 3 misdemeanor. No other criminal penalty shall attach for any violation of this Article.

"**§ 120-135. Sharing confidential information amongst legislative employees.**

A legislative employee hired by, supervised by, or assigned to a member shall be treated as the member for purposes of legislative confidentiality."

SECTION 2. If House Bill 1134 of the 2009 General Assembly becomes law, G.S. 114-51(d) as enacted by House Bill 1134 of the 2009 General Assembly reads as rewritten:

"(d) This section shall not apply to the Judicial ~~Department.~~Department or the General Assembly. A member of the General Assembly may request the assistance of the Open Government Unit to assist with mediating a public records request."

SECTION 3. This act is effective when it becomes law, except that the amendments to G.S. 120-134 in Section 1 of this act become effective December 1, 2009, and apply to offenses committed on or after that date.

HOUSE BILL 104:
LEC Term Changes/Ethics Training

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	July 26, 2009
Introduced by:	Reps. Glazier, Lucas, Stam, McGee	**Prepared by:**	R. Erika Churchill Committee Counsel
Analysis of:	PCS to Second Edition H104-CSST-72		

SUMMARY: ***The proposed committee substitute for House Bill 104 would make clarifying and substantive changes to Article 17 of Chapter 120 related to legislative confidentiality and also makes it clear that the Article does not abrogate the ability of a legislator to invoke legislative immunity if a legislative employee is being required to testify as to protected information.***

[As introduced, House Bill 104 was identical to Senate Bill 136, introduced by Sen. Clodfelter, which was signed by the Governor and has been chaptered as S.L. 2009-10.]

CURRENT LAW: Article 17 of Chapter 120 provides that drafting[1] and information[2] requests made by legislators to legislative employees are confidential, as are all supporting documents[3] the legislator submits or causes to be submitted to a legislative employee in connection with the drafting or information request. Drafting and information requests, including supporting documents are not "public records".[4] Legislative employees may not even acknowledge the existence of a request to any person who is not another legislative employee without the consent of the legislator.

Documents produced by a legislative employee in response to drafting and information requests are confidential.[5] Those documents become "available to the public" in only the following instances:

- When the document is introduced as a bill or resolution.
- When the document is a proposed as an amendment or committee substitute offered on the floor of a chamber or in a committee meeting.
- When the document is offered as a conference report at a joint meeting of the conference committee.
- When the document has been distributed on the floor of a chamber or at a committee or commission meeting not held in closed session.[6]

Requests by the Fiscal Research Division for assistance on the preparation of fiscal notes are confidential and the employees in another agency may not disclose the existence of the request or any documents created in response to the request unless and until the fiscal note is released.[7] Similar provisions apply to requests for assistance made by the Program Evaluation Division.[8]

No present or former legislative employee may be required to disclose any information obtained in a legislative committee or commission meeting, on the floor of either chamber, in any office of a legislator, or as a result of communications that are confidential because they are information or drafting requests. [9] However, a court may compel disclosure "if in his opinion, the same if necessary to a proper

[1] G.S. 120-130(a).
[2] G.S. 120-130(b).
[3] G.S. 120-130(c).
[4] G.S. 120-130(d).
[5] G.S. 120-131(a).
[6] G.S. 120-131(b).
[7] G.S. 120-131.1(a).
[8] G.S. 120-131.1(b)
[9] G.S. 120-132.

administration of justice.[10] A violation of the Article "shall be grounds for disciplinary action in the case of employees" and removal from office in the case of public officers, but there are no criminal penalties.[11]

The common law doctrine of legislative immunity protects legislators from being compelled to testify as to their legislative acts.[12] This doctrine is reflected in G.S. 120-9 which provides that: "[t]he members shall have freedom of speech and debate in the General Assembly, and shall not be liable to impeachment or question, in any court or place out of the General Assembly, for words therein spoken." There are no North Carolina cases interpreting or applying legislative immunity, but other courts have held that it extends to legislative employees participating in the legislative process.

BILL ANALYSIS:

Section 1 of the bill would amend a variety of sections in Article 17 of Chapter 120. The changes in each section are outlined below.

§ 120-130 is amended to provide that documents submitted to a legislator from another person are confidential and are not public records.

There are no substantive changes to **§ 120-131** related to the confidentiality of documents produced by legislative employees at the request of legislators.

The changes in **§ 120-131.1** add two new subsections that would make information and drafting requests made by a legislative employee to an employee in another agency confidential. The request, any documents submitted or created as a result of the request would not be considered public records. All requests made under G.S. 120-131.1 (requests for fiscal notes, assistance with program evaluations and research and drafting requests) would have to be marked "confidential" and that the document is not a public record.

§ 120-132 is amended to prohibit a legislative employee from disclosing confidential information and to make it clear that a court's authority to compel the testimony of a legislative employee regarding confidential communications or matters related to the legislative process if the matter is limited by North Carolina's speech and debate clause, the common law of legislative immunity and **§G.S. 120-133** related to the confidentiality of redistricting communications.

§ 120-134 is amended to provide that it would be a Class 2 misdemeanor for a person who is not currently a legislative employee to breach legislative confidentiality.

A new section, **§ 120-135** is created to codify the current practice of treating an employee or intern assigned to a member of the General Assembly as that member for purposes of confidentiality.

Section 2 provides that if HB 1134 (which creates an open government section in the Department of Justice) becomes law, a member may request the assistance of that agency to mediate a public records request that would require the expenditure of significant State resources in order to respond.

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

H104-SMST-65(CSST-72) v1

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[10] Id., but see G.S. 120-133 which makes all drafting and information requests and all documents prepared by legislative employees concerning redistricting public records "upon the act establishing the relevant district plan becoming law.

[11] G.S. 120-134.

[12] For an in depth discussion of legislative immunity, See "Legislative Immunity in Minnesota", Peter S. Wattson, Senate Counsel, State of Minnesota, updated July 9, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 817*

Short Title:	Establish NC Financial Literacy Council.	(Public)
Sponsors:	Representatives Tillis, Glazier, Howard, Wainwright (Primary Sponsors); Brubaker, Bryant, Carney, Cotham, Dollar, Faison, Fisher, Guice, Hall, Harrison, Holliman, Hughes, Insko, Jones, Justice, Killian, Lucas, McComas, McGee, Neumann, Stam, and Steen.	
Referred to:	Education, if favorable, Appropriations.	

March 30, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A FINANCIAL LITERACY COUNCIL TO COORDINATE AND EXPAND THE STATEWIDE DELIVERY OF FINANCIAL EDUCATION FOR ALL NORTH CAROLINIANS.

Whereas, The $kill Set Survey conducted through the Office of the State Treasurer found seventh graders failed in their knowledge of basic financial concepts; and

Whereas, the North Carolina Jump$tart Coalition's biannual survey of high schoolers found that North Carolina's young people understand less about financial concepts and the functioning of the economy than was the case two years previously; and

Whereas, nearly three million households in North Carolina do not have relationships with mainstream financial institutions that provide opportunities to save and access other financial services; and

Whereas, more than a quarter of all North Carolina households with children do not have enough money saved to weather a loss of earned income for three months; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 114 of the General Statutes is amended by adding a new Article to read:

"Article 8.

"Financial Literacy Council.

"**§ 114-50. Financial Literacy Council established.**

There is established within the Department of Justice the North Carolina Financial Literacy Council (Council). The Council shall monitor and assist the Department of Public Instruction in the coordination of statewide delivery of financial education within the public school system, shall identify programs designed to increase the financial literacy of North Carolinians outside the public school system, and shall work to expand access to financial education resources and programs in communities across North Carolina.

"**§ 114-51. Membership; terms.**

(a) The Council shall consist of 18 members appointed by and serving at the pleasure of the Governor. The Governor shall designate a chair from among the members of the Council. Membership shall be as follows:

(1) Ten members from government agencies with responsibility for programming and services related to financial education, financial services,

and related economic stability efforts. At least one representative shall come from each of the following government agencies:

a. Community College System.
b. Department of Commerce.
c. Department of Justice.
d. Department of Labor.
e. Department of Public Instruction.
f. Department of the Secretary of State.
g. Department of the State Treasurer.
h. Office of the Commissioner of Banks.
i. The University of North Carolina.

(2) Two public members with experience in the financial services industry.

(3) Two public members who represent employers with experience in providing financial education to their employees.

(4) Four public members with experience in consumer advocacy or nonprofit financial education.

(b) Members of the Council shall be appointed for terms of three years. Members shall serve until their successors are appointed and qualified.

"**§ 114-52. Department of Justice to support.**

The Department of Justice shall provide administrative and staff support to the Council.

"**§ 114-53. Frequency of meetings.**

The Council shall meet at least quarterly.

"**§ 114-54. Duties.**

The Council shall conduct the following activities:

(1) Study and document current financial education programs in North Carolina and best practices across the country.

(2) Coordinate activities related to financial education and asset building that occur within various government agencies, private enterprise, and the nonprofit sector to ensure dissemination of resources and information to households across the State.

(3) Propose public and private policy, organizational changes, and systemic changes to ensure all North Carolinians have access to training about necessary financial skills and experience with financial services.

(4) Consider and make recommendations specifically to address the following issues:

a. Current personal financial literacy programming in the public schools and how to integrate financial education in K-12 to ensure that young people are prepared for financial success.
b. Unique financial issues facing students in higher education through the community college and public university systems.
c. Creation and access to financial products that provide hands-on learning of financial skills.

(5) Monitor the outcomes of financial education programs, focusing specifically on the following indicators: improved financial knowledge, improved financial behaviors, and increased access to and use of affordable financial services.

(6) Use the talents, expertise, and resources within the State, especially those of the public schools, community colleges, and State university system, as well as the bank and credit union industries, in furtherance of its mission.

(7) Report to the General Assembly and the Governor annually on the performance of its prescribed duties and on the financial education activities conducted by State agencies and their impact.

"**§ 114-55. State officers, etc., upon request, to furnish data and information to the Council.**

Except as provided in G.S. 105-259, all officers, agents, agencies, and departments of the State are required to give to the Council, upon request, all information and all data within their possession or ascertainable from their records."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 817*
PROPOSED SENATE COMMITTEE SUBSTITUTE H817-PCS80500-RC-50

Short Title: Ethics TC and Other Changes. (Public)

Sponsors:

Referred to:

March 30, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES TO CHAPTERS 120, 120C, AND 138A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 120-86(a) reads as rewritten:

"(a) No person shall offer to give or give to ~~a legislator or a member of a legislator's immediate family, or to a business with which the legislator is associated,~~ another person, and no legislator shall solicit or receive, anything of monetary ~~value, including a gift, favor or service or a promise of future employment,~~ value based on any ~~understanding~~ agreement that the legislator's vote, official actions or judgment would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the legislator in the discharge of the legislator's duties. For purposes of this subsection, the term "anything of monetary value" includes a gift, favor, service, or a promise of future employment."

SECTION 1.(b) This section becomes effective December 1, 2009, and applies to offenses committed on or after that date.

SECTION 2. G.S. 120-103.1 reads as rewritten:

"**§ 120-103.1. Investigations by the Committee.**

(a) Institution of Proceedings. – On its own motion, or upon receipt of a referral of a complaint from the State Ethics Commission under Chapter 138A of the General Statutes, the Committee shall conduct an investigation into any of the following:

(1) The application or alleged violation of Chapter 138A of the General Statutes and of this Article.

(2) Repealed by Session Laws 2007-348, s. 2, effective August 9, 2007.

(3) The alleged violation of the criminal law by a legislator while acting in the legislator's official capacity as a participant in the lawmaking process.

(a1) Complaints on Its Own Motion. – An investigation initiated by the Committee on its own motion instituted under subsection (a) of this section shall be treated as a complaint for purposes of this section and need not be sworn or verified. Any requirements under this section that require the Committee to notify the complainant shall not apply to complaints taken up by the Committee on its own motion. If the Committee is acting on a complaint referred to the Committee by the Commission where the Commission was acting on its own motion, the Committee shall be deemed to have satisfied the notice requirements by providing notice to the Commission. Any notice provided to the Commission under this section is confidential and shall not be disclosed by the Commission.

(b) Initial Consideration of a Complaint. – All of the following shall apply to the Committee's initial consideration of a complaint:

(1) The Committee may, in its sole discretion, request additional information to be provided by the complainant within a specified period of time of no less than seven business days.

(2) The Committee may decline to accept or further investigate a complaint if it determines that any of the following apply:

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

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

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

~~(3) The Committee shall send a notice of the initiation of an investigation under this section to the legislator who is the subject of the complaint within 10 days of the date of the decision to initiate the investigation.~~

(4) Notwithstanding any other provisions of this section, complaints filed with the Committee concerning the conduct of the Lieutenant Governor shall be referred to the State Ethics Commission under Chapter 138A of the General Statutes without investigation by the Committee.

(c) Investigation of ~~Complaints by the Committee~~Complaints. – The Committee shall investigate all complaints properly before the Committee in a timely manner. Within 60 days of ~~the~~ receiving a complaint or a referral of ~~the~~ a complaint ~~with~~ to the Committee, the Committee shall do at least one of the following:

(1) Dismiss the complaint.

(2) Initiate a preliminary investigation of the complaint.

(3) ~~refer~~ Refer the complaint for further investigation and a hearing in accordance with subsection (i) of this ~~section or initiate an investigation of a complaint or dismiss the complaint.~~section.

(4) Make recommendations to the house in which the legislator who is the subject of the complaint is a member without further investigation, if the referral is from the State Ethics Commission.

(c1) Preliminary Investigation. – The Committee may initiate a preliminary investigation if it determines that the complaint alleges facts sufficient to constitute a violation of matters over which the Committee has jurisdiction as set forth in subsection (a) of this section. In determining whether there is reason to believe that a violation has or may have occurred, a member of the Committee may take general notice of available information even if not formally provided to the Committee in the form of a complaint. The Committee may utilize the services of a hired investigator when conducting investigations. The Committee shall provide written notification of the initiation of an investigation under this section to the legislator who is the subject of the complaint within 10 days of the date of the Committee's decision to initiate an investigation.

~~(d) On a referral from the State Ethics Commission, the Committee shall do at least one of the following:~~

~~(1) Make recommendations to the house in which the legislator who is the subject of the complaint is a member without further investigation.~~

~~(2) Conduct further investigations and hearings under this section.~~

~~(3) Dismiss the complaint.~~

(e) Investigation by the Committee of Matters Other Than Complaints. – The Committee may investigate matters other than complaints properly before the Committee under subsection (a) of this section. For any investigation initiated under this subsection, the Committee may take any action it deems necessary or appropriate to further compliance with this Article, including the initiation of a complaint, the issuance of an advisory opinion under G.S. 120-104, or referral to appropriate law enforcement or other authorities pursuant to subdivision (j)(2) of this section.

(f) Legislator Cooperation with Investigation. – Legislators shall promptly and fully cooperate with the Committee in any Committee-related investigation. Failure to cooperate fully with the Committee in any investigation shall be grounds for sanctions under this section.

(g) Dismissal of Complaint After Preliminary ~~Inquiry.~~Investigation. – If the Committee determines at the end of its preliminary ~~inquiry~~ investigation that the complaint does not allege facts sufficient to constitute a violation of matters over which the Committee has jurisdiction as set forth in subsection (a) of this section, the Committee shall dismiss the complaint and provide written notice of the dismissal to the individual who filed the complaint and to the legislator against whom the complaint was filed.

(h) ~~Notice.~~Probable Cause Determination. – If at the end of its preliminary ~~inquiry;~~investigation, the Committee determines that probable cause exists to proceed with further investigation into the conduct of a legislator, the Committee shall determine the charges that will be the basis for further investigation of the complaint and provide written notice to the individual who filed the complaint and the legislator ~~as to the fact of the~~that the Committee will conduct further investigation and the charges against the legislator. The legislator shall be given an opportunity to file a written response to the charges with the Committee.

(h1) Consideration of Response and Notice of Hearing. – The Committee shall give full and fair consideration to the complaint and to the legislator's response to the complaint. If the Committee determines that the complaint cannot be resolved without further investigation and a hearing, or if the legislator requests a public hearing, the Committee shall hold a hearing on the charges against the legislator. The Committee shall send a notice of the hearing to the complainant and to the legislator. The notice shall contain the charges against the legislator and the time and place for the hearing. The Committee shall begin the hearing no sooner than 15 days and no later than 90 days after the date of the notice of hearing.

(i) Hearing. – All the following shall apply to

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

~~(2) The Committee shall send a notice of the hearing to the complainant and the legislator. The notice shall contain the time and place for a hearing on the matter, which shall begin no less than 30 days and no more than 90 days after the date of the notice.~~

~~(3)~~ ~~At~~ any hearing on a complaint held by the Committee:

(4) ~~a.~~ Oral evidence shall be taken only on oath or affirmation.

(5) ~~b.~~ The hearing shall be open to the public, except for matters that could otherwise be considered in closed session under G.S. 143-318.11, matters involving minors, or matters involving a personnel record. In any event, the deliberations by the Commission on a complaint may be held in closed session.

(6) ~~c.~~ The legislator being investigated shall have the right to present evidence, call and examine witnesses, cross-examine witnesses, introduce exhibits, and be represented by counsel.

(j) Disposition of Investigations. – Except as permitted under subsections (b) and (g) of this section, after the hearing, the Committee shall dispose of ~~a~~ the matter before the Committee under this section, in any of the following ways:

(1) If the Committee finds that the alleged violation is not established by clear and convincing evidence, the Committee shall dismiss the complaint.

(2) If the Committee finds that the alleged violation is established by clear and convincing evidence, the Committee shall do one or more of the following:

a. Issue a public or private admonishment to the legislator.

b. Refer the matter to the Attorney General for investigation and referral to the district attorney for possible prosecution or the appropriate house for appropriate action, or both, if the Committee finds substantial evidence of a violation of a criminal statute.

c. Refer the matter to the appropriate house for appropriate action, which may include censure and ~~expulsion, if the Committee finds substantial evidence of a violation of this Article or other unethical activities.~~expulsion.

(3) If the Committee issues an admonishment as provided in subdivision (2)a. of this subsection, the legislator affected may, upon written request to the Committee, have the matter referred as provided under subdivision (2)c. of this subsection.

(k) Effect of Dismissal or Private Admonishment. – ~~In the case of a dismissal or private admonishment,~~If the Committee dismisses a complaint or issues a private admonishment prior to commencing a hearing under subsection (i) of this section, the Committee shall retain its records or findings in confidence, unless the legislator under inquiry requests in writing that the records and findings be made public. If the Committee later finds that a legislator's subsequent unethical activities were similar to and the subject of an earlier private admonishment, then the Committee may make public the earlier admonishment and the records and findings related to it.

(l) Confidentiality. – Except as provided under subsection (k) of this section, the complaint, response, records, and findings of the Committee connected to an inquiry under this section shall be confidential and not matters of public record, except as otherwise provided in this section or when the legislator under inquiry requests in writing that the complaint, response, and findings be made public. Once a hearing under subsection (i) of this section commences the complaint, response, Committee's report to the house, and all other documents offered at the hearing in conjunction with the complaint, that are not otherwise privileged or confidential under law, shall be public records. If no hearing is held, at such time as the Committee recommends sanctions to the house of which the legislator is a member, the complaint, response, and Committee's report to the house shall be made public.

(m) Concurrent Jurisdiction. – Any action or lack of action by the Committee under this section shall not limit the right of each house of the General Assembly to discipline or to expel its members.

(n) Reports. – The Committee shall publish annual statistics on complaints filed with or considered by the Committee, including the number of complaints filed, the number of complaints dismissed, the number of complaints resulting in admonishment, the number of complaints referred to the appropriate house for appropriate action, the number of complaints referred for criminal prosecution, and the number and age of complaints pending action by the Committee."

SECTION 3. G.S. 120C-103 is amended by adding a new subsection to read:

"(a1) A designated individual appointed to a board determined and designated as nonadvisory under G.S. 138A-10(a)(3) by the Commission shall attend lobbying education and

awareness programs within six months of notification of the designation by the Commission and at least every two years thereafter in a manner as the Commission deems appropriate."

SECTION 4. G.S. 120C-200(d) reads as rewritten:

"(d) ~~Each~~ Unless a resignation is filed under G.S. 120C-210, each registration statement of a lobbyist required under this Chapter shall be effective from the date of filing until January 1 of the following year. The lobbyist shall file a new registration statement after that date, and the applicable fee shall be due and payable."

SECTION 5. G.S. 120C-206 reads as rewritten:

"**§ 120C-206. Lobbyist principal's authorization.**

(a) A written authorization signed by the lobbyist principal authorizing the lobbyist to represent the principal shall be filed with the Secretary of State within ~~10~~ 20 business days after the lobbyist's registration. If the written authorization is filed more than 20 business days after the lobbyist's registration and before January 1 of the following year, the lobbyist registration is effective from the date of filing of the lobbyist registration and all reports due under Article 4 of this Chapter shall be filed.

(b) The form of the written authorization shall be prescribed by the Secretary of State and shall include the lobbyist principal's full name, complete address, and telephone number, name and title of any official authorized to sign for the lobbyist principal, and the name of each lobbyist registered to represent that principal.

(c) An amended authorization shall be filed with the Secretary of State no later than 10 business days after any change in the information on the principal's authorization. Each supplementary authorization shall include a complete statement of the information that has changed."

SECTION 6. Article 2 of Chapter 120C is amended by adding a new section to read:

"**§ 120C-210. Resignation and termination.**

(a) A registration of a lobbyist under G.S. 120C-200 and the written authorization of that lobbyist principal under G.S. 120C-206 are terminated upon the filing of either a lobbyist resignation or a principal termination with the Secretary of State, whichever occurs first.

(b) Lobbyist resignations and lobbyist principal terminations are effective upon filing."

SECTION 7. The Joint Legislative Ethics Committee and the State Ethics Commission shall jointly study the process for issuing, reviewing, and revising formal advisory opinions, and the process for publishing formal and informal advisory opinions, applicable to all persons covered under Chapters 120, 120C, and 138A of the General Statutes. The joint study shall review the redacted opinions of both the Legislative Ethics Committee and the State Ethics Commission, with a specific focus on all opinions related to indirect gifts. The Joint Legislative Ethics Committee and the State Ethics Commission may each make recommendations to the 2010 Regular Session of the 2009 General Assembly.

SECTION 8.(a) G.S. 120C-401(a) reads as rewritten:

"(a) Reports shall be filed whether or not reportable expenditures are made and shall be due ~~10~~ 15 business days after the end of the reporting period."

SECTION 8.(b) G.S. 120C-800(f) reads as rewritten:

"(f) Within ~~10~~ 15 business days after the end of the quarter in which the reportable expenditure was made, reports required by this section shall be filed with the Secretary of State in a manner prescribed by the Secretary of State, which may include electronic reports. If the designated individual is required to file a statement of economic interest under G.S. 138A-24, then that designated individual may opt to report any information required by this section in the statement of economic interest."

SECTION 9. G.S. 138A-10(a) reads as rewritten:

"**§ 138A-10. Powers and duties.**

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

...

(4) Receive and review all statements of economic interests filed with the Commission by prospective and actual covered persons and evaluate whether (i) the statements conform to the law and the rules of the Commission, and (ii) the financial interests and other information reported reveals actual or potential conflicts of interest. Pursuant to G.S. 138A-24(e), this subdivision does not apply to statements of economic interest of legislators and judicial officers.

...

(12) Publish annually statistics on complaints filed with or considered by the Commission, including the number of complaints filed, the number of complaints referred under G.S. 138A-12(b), the number of complaints dismissed under G.S. 138A-12(c)(4), the number of complaints dismissed under G.S. 138A-12(f), the number of complaints referred for criminal prosecution under G.S. 138A-12, the number of complaints dismissed under G.S. 138A-12(h), the number of complaints referred for appropriate action under G.S. 138A-12(h) or G.S. 138A-12(k)(3), and the number and age of complaints pending action by the Commission.

...."

SECTION 10. G.S. 138A-12(a1) reads as rewritten:

"(a1) Notice of Allegation. – Upon receipt by the Commission of ~~an~~ a written allegation of unethical conduct by a covered person or legislative employee, or the initiation by the Commission of an inquiry into unethical conduct under subsection (b) of this section, the Commission shall immediately notify the covered person or legislative employee subject to the allegation or inquiry in writing."

SECTION 11. G.S. 138A-12(i)(3) reads as rewritten:

"(i) Hearing. –

...

(3) The Commission shall make available to the public servant or that public servant's private legal counsel ~~prior to a hearing all relevant information~~all documents or other evidence which are intended to be presented to ~~collected by~~ the Commission or which a reasonable person would believe might exculpate the accused public servant at least 30 days prior to the date of the hearing held in connection with ~~its~~ the investigation of a complaint. Any documents or other evidence discovered within less than 30 days of the hearing shall be furnished as soon as possible after discovery but prior to the hearing.

...."

SECTION 12. G.S. 138A-12(l) reads as rewritten:

"(l) Notice of Dismissal. – Upon the dismissal of a complaint under this section, the Commission shall provide written notice of the dismissal to the individual who filed the complaint and the covered person or legislative employee against whom the complaint was filed. The Commission shall forward copies of complaints and notices of dismissal of complaints against legislators to the Committee, against legislative employees to the employing entity for legislative employees, and against judicial officers to the Judicial Standards Commission for complaints against justices and judges, and the senior resident superior court judge of the district or county for complaints against district attorneys, or the chief district court judge of the district or county for complaints against clerks of court. The Commission shall also forward a copy of the notice of dismissal to the employing entity of the covered person against

whom a complaint was filed if the employing entity received a copy of the complaint under subdivision (5) of subsection (c) of this section. Except as provided in subsection (n) of this section, the complaint and notice of dismissal are confidential and not public records."

SECTION 13. G.S. 138A-14, as amended by Section 4 of S.L. 2009-10, reads as rewritten:

"**§ 138A-14. Ethics education program.**

(a) The Commission shall develop and implement an ethics education and awareness program designed to instill in all covered persons and their immediate staffs, and legislative employees, a keen and continuing awareness of their ethical obligations and a sensitivity to situations that might result in real or potential conflicts of interest.

(b) The Commission shall make basic ethics education and awareness presentations to all public servants and their immediate staffs, upon their election, appointment, or employment, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant ~~and the immediate staff of every public servant~~ shall participate in an ethics presentation approved by the Commission within six months of the public servant's election, reelection, appointment, or employment, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate.

(b1) A public servant appointed to a board determined and designated as nonadvisory under G.S. 138A-10(a)(3) shall attend an ethics presentation approved by the Commission within six months of notification of the designation by the Commission and at least every two years thereafter in a manner as the Commission deems appropriate.

(c) The Commission, jointly with the Committee, shall make basic ethics education and awareness presentations to all legislators and legislative employees upon their election, reelection, appointment, or employment and shall offer periodic refresher presentations as the Commission and the Committee deem appropriate. Every legislator shall participate in an ethics presentation approved by the Commission and Committee within two months of either the convening of the General Assembly to which the legislator is elected or within two months of the legislator's appointment, whichever is later. Every legislative employee shall participate in an ethics presentation approved by the Commission and Committee within three months of employment, and shall attend refresher ethics education presentations at least every two years thereafter, in a manner as the Commission and Committee deem appropriate.

(d) Upon request, the Commission shall assist each agency in developing in-house education programs and procedures necessary or desirable to meet the agency's particular needs for ethics education, conflict identification, and conflict avoidance.

(e) Each agency head shall designate an ethics liaison who shall maintain active communication with the Commission on all agency ethical issues. The ethics liaison shall attend ethics education and awareness programs as provided under this section and lobbying education and awareness programs as provided under G.S. 120C-103 and continuously assess and advise the Commission of any issues or conduct which might reasonably be expected to result in a conflict of interest and seek advice and rulings from the Commission as to their appropriate resolution.

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

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

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

(i) This section shall not apply to judicial officers."

SECTION 14. G.S. 138A-22(a) reads as rewritten:

"(a) Every covered person subject to this Chapter who is elected, appointed, or employed, including one appointed to fill a vacancy in elective office, except for public servants (i) included under G.S. 138A-3(30)b., e., f., or g. whose annual compensation from the State is less than sixty thousand dollars ($60,000), or (ii) who are ex officio student members under Chapters 115D and 116 of the General Statutes, shall file a statement of economic interest with the Commission prior to the covered person's initial appointment, election, or employment and no later than April 15 of every year thereafter, except as otherwise filed under subsections (c1) and (d) of this section. A prospective covered person required to file a statement under this Chapter shall not be appointed, employed, or receive a certificate of election, prior to submission by the Commission of the Commission's evaluation of the statement in accordance with this Article. The requirement for an annual filing under this subsection also shall apply to covered persons whose terms have expired but who continue to serve until the covered person's replacement is appointed. Once a statement of economic interest is properly completed and filed under this Article, the statement of economic interest does not need to be supplemented or refiled prior to the next due date set forth in this subsection."

SECTION 15. G.S. 138A-24 is amended by adding a new subsection to read:

"(c2) A public servant appointed to a board determined and designated as nonadvisory under G.S. 138A-10(a)(3) shall file the initial statement of economic interest within 60 days of notification of the designation by the Commission and as provided in this section thereafter."

SECTION 16. G.S. 138A-25(a) reads as rewritten:

"(a) Within 30 days after the date due under G.S. 138A-22, the Commission shall notify filing persons who have failed to file or filing persons whose statement has been deemed incomplete. For a filing person currently serving as a covered person, the Commission shall notify the filing person and the ethics liaison that if the statement of economic interest is not filed or completed within 30 days of receipt of the notice of failure to file or complete, the filing person shall be subject to a fine as provided for in this section."

SECTION 17. G.S. 138A-31(a) reads as rewritten:

"(a) Except as permitted under G.S. 138A-38, a covered person or legislative employee shall not knowingly use the covered person's or legislative employee's public position in an official action or legislative action that will result in financial ~~benefit, direct or indirect,~~ benefit to the covered person or legislative employee, a member of the covered person's or legislative employee's extended family, or business with which the covered person or legislative employee is associated. This subsection shall not apply to financial or other benefits derived by a covered person or legislative employee that the covered person or legislative employee would enjoy to an extent no greater than that which other citizens of the State would or could enjoy, or that are so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the covered person's or legislative employee's ability to protect the public interest and perform the covered person's or legislative employee's official duties would not be compromised."

SECTION 18. G.S. 138A-32(e) reads as rewritten:

"(e) Subsections (c), (d), and (d1) of this section shall not apply to any of the following:

(1) Food and beverages for immediate consumption in connection with any of the following:

a. An open meeting of a public body, provided that the open meeting is properly noticed under Article 33C of Chapter 143 of the General Statutes.

b. A gathering of ~~an organization~~ a person or governmental unit with at least 10 or more individuals in attendance open to the general public, provided that a sign or other communication containing a message that is reasonably designed to convey to the general public that the gathering is open to the general public is displayed at the gathering.

c. A gathering of a person or governmental unit to which the entire board of which a public servant is a member, at least 10 public servants, all the members of the House of Representatives, all the members of the Senate, all the members of a county or municipal legislative delegation, all the members of a recognized legislative caucus with regular meetings other than meetings with one or more lobbyists, all the members of a committee, a standing subcommittee, a joint committee or joint commission of the House of Representatives, the Senate, or the General Assembly, or all legislative employees are invited, and one of the following applies:

1. At least 10 individuals associated with the person or governmental unit actually attend, other than the covered person or legislative employee, or the immediate family of the covered person or legislative employee.
2. All shareholders, employees, board members, officers, members, or subscribers of the person or governmental unit located in North Carolina are notified and invited to attend.

For purposes of this sub-subdivision only, the term "invited" shall mean written notice from at least one host or sponsor of the gathering containing the date, time, and location of the gathering given at least 24 hours in advance of the gathering to the specific qualifying group listed in this sub-subdivision. If it is known at the time of the written notice that at least one sponsor is a lobbyist or lobbyist principal, the written notice shall also state whether or not the gathering is permitted under this section."

SECTION 19. G.S. 143-47.7(c) reads as rewritten:

"(c) The following form may be used to comply with the requirements of this section:

"NOTICE OF APPOINTMENT

Notice is given that _____ is hereby appointed to the following
Name
public office:

Public Office: _____

Citation to Law or Other Authority Authorizing the Appointment:

_____

Specific Statutory Qualification for the Public Office, if Applicable:

_____

Address of the Appointee: _____

_____

_____

County of Residence of the Appointee: _____

Date Term of Appointment Begins: _____

Date Term of Appointment Ends: _____

Name of Person the Appointee Replaces, if applicable:

_____

_____ _____

Date of Appointment Signature

_____

Office of Appointing Authority

Distribution:

Governor
Secretary of State
Legislative Library
State Library
State Controller
State Ethics Commission".

SECTION 20. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 817: Ethics TC and Other Changes

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	August 3, 2009
Introduced by:	Reps. Tillis, Glazier, Howard, Wainwright	**Prepared by:**	R. Erika Churchill Committee Counsel
Analysis of:	PCS to First Edition H817-CSRC-50		

SUMMARY: ***The proposed committee substitute for House Bill 817 would make various changes to the Legislative Ethics Act, State Government Ethics Act, and Lobbying Laws.***

[As introduced, this bill was identical to S1019, as introduced by Sen. Stein. S1019 has been chaptered as S.L. 2009-265.]

CURRENT LAW & BILL ANALYSIS:

Section 1. G.S. 120-86(a) is amended to broaden the scope of the legislative bribery statute. It would prohibit the offering or giving of anything of value to another person (currently it applies to immediate family members and business with which associated) where there is an agreement (currently "an understanding") that the legislator's vote, official actions or judgment is influenced or where it could be reasonably inferred that the thing of value would influence the legislator in the discharge of the legislator's duties. ***Effective December 1, 2009.***

Section 2. G.S. 120-103.1 is amended to reorganize parts and certain procedures of the LEC investigatory statute and to clarify certain notice provisions. One substantive change is to allow the LEC to commence a hearing within 15 days of giving a legislator notice that a hearing will be held. The earliest the hearing can be held currently is within 30 days of giving notice to a legislator.

Section 3. G.S. 120C-103 requires a public servant appointed to a board the SEC determines to be nonadvisory to attend lobbying education and awareness within 6 months of notification by the SEC that the board has been determined to be nonadvisory.

Section 4. G.S. 120C-200(d) is amended to clarify that a resignation from a lobbyist may terminate a lobbyist's annual registration.

Section 5. G.S. 120C-206 is amended to clarify that if a lobbyist principal written authorization is filed more than 10 business days after the filing of the lobbyist's registration, the lobbyist registration relates back to the filing of that registration when the written authorization is filed. It would also require all reports required under Article 4, Reporting, to be filed.

Section 6. Article 2 of Chapter 120C is amended to add a new statute governing resignation and termination of the lobbyist – lobbyist principal relationship. It would specify that resignation and termination is effective upon its filing with the Secretary of State's office.

Section 7. Creates a joint study between the Legislative Ethics Commission and the State Ethics Commission on the issuance of advisory opinions, with a specific emphasis on advisory opinions related to indirect gifts. The study would be reported to the 2010 Regular Session of the 2009 General Assembly.

Section 8. Would extend the filing period for reports by lobbyists, lobbyists principals and liaison personnel from 10 to 15 business days following the due date. Would also extend the filing period for

miscellaneous items totaling more $200 in a calendar quarter for the purpose of lobbying from 10 to 15 business days following the close of the calendar quarter in which the item or items were given.

Section 9. G.S. 138A-10(a)(4) is amended to reflect a 2008 change that provided the SEC is not required to evaluate the Statements of Economic Interest filed by legislators or judicial officers. G.S. 138A-10(a)(12) is amended to require the Commission to publish in its annual statistics publication the age of complaints pending action by the Commission, parallel to the reporting required of the Legislative Ethics Committee.

Section 10. G.S. 138A-12(a1) is amended to make a technical change to replace the incorrect term of 'an' with the correct term of 'a'.

Section 11. G.S. 138A-12(i)(3) is amended to require the Commission to make available to a public servant, or that person's private legal counsel, all documents and other evidence that are to be presented to the Commission at the hearing or which a reasonable person would believe are exculpatory at least 30 days prior to a hearing. If documents or other evidence is discovered later, it is to be provided as soon as possible after discovery, but before the hearing. Prior law did not specify when the information had to be provided to the public servant, and the change tracks the practice of the Legislative Ethics Committee.

Section 12. G.S. 138A-12(l) directs the Commission to forward a copy of the notice of dismissal of a complaint to the employing entity of the covered person against whom a complaint was filed if the employing entity had received a copy of the notice of complaint and would not otherwise be notified.

Section 13. G.S. 138A-14 is amended to not require direct reports of public servants who are also public servants to receive ethics education. Requires public servants appointed to nonadvisory boards to receive ethics education within 6 months of the board being designated as nonadvisory. Also requires all ethics liaisons to receive ethics education.

Section 14. G.S. 138A-22(a) is amended to remove the requirement that ex officio student members of the boards of trustees for community colleges, universities and the Board of Governors must file a Statement of Economic Interest.

Section 15. G.S. 138A-24(c2) is amended by adding a new subsection that requires a public servant appointed to a nonadvisory board to file a Statement of Economic Interest within 60 days of notification by the SEC that the board has been determined to be nonadvisory.

Section 16. When a public servant serving on covered boards or commission fails to file a Statement of Economic Interest, that public servant is notified. G.S. 138A-25(a) is amended to also require notification of the ethics liaison.

Section 17. G.S. 138A-31(a): technical change to delete an outdated phrase.

Section 18. G.S. 138A-32(e): technical change to replace a phrase intended to include 'governmental organization.'

Section 19. Would add the State Ethics Commission to the distribution list of notification of appointments to boards.

EFFECTIVE DATE: Except as noted, when it becomes law.

Attachment 8

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 817 DATE _____

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

COMMITTEE SUBSTITUTE H817-PCS80500-RC-50

Rep.)
Sen.) Brunstetter

1 moves to amend the bill on page 1, line 5-15
2 ( ) WHICH CHANGES THE TITLE
3 by deleting those lines
4
5 And by renumbering the remaining Sections of the bill accordingly
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 817*

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

H817-AST-113 [v.2]

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

Date _____,2009

Senator _____

moves to amend the bill on page 5, lines 48-49 by inserting the following between those lines:

"**SECTION 8.5.** G.S. 120C-401(e) reads as rewritten:

"(e) When any report as required by this Article is not filed, the Secretary of State shall send a certified or registered letter advising the lobbyist, lobbyist principal, or other person required to report of the delinquency and the penalties provided by law. The Secretary of State may impose a late filing fee of fifty dollars ($50) per day, commencing with the tenth business day after the date the certified or registered letter is delivered to the lobbyist, lobbyist principal, or other person required to report. The maximum late filing fees that may be charged are five hundred dollars ($500). Within 20 days of the receipt of the letter, the report shall be delivered or posted by United States mail to the Secretary of State together with ~~a~~ the late filing ~~fee in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).~~ fee. Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section.".

withdrawn

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. 817 DATE _____

S. B. No. _____ Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Brunstetter
Sen.)

1 moves to amend the bill on page 6, line 33

2 ( ) WHICH CHANGES THE TITLE

3 by inserting "at the hearing" between "presented"

4 and "to" on that line.

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SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 817*

AMENDMENT NO. 4
(to be filled in by
Principal Clerk)

H817-AST-119 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
H817-CSRC-50

Date _____,2009

Senator Albertson

moves to amend the bill on page 10, lines 21-22 by inserting the following between those lines:

"**SECTION 20.** G.S. 115D-12(a) reads as rewritten:

"(a) Each community college established or operated pursuant to this Chapter shall be governed by a board of trustees consisting of 13 members, or of additional members if selected according to the special procedure prescribed by the third paragraph of this subsection, who shall be selected by the following agencies. No member of the General Assembly may be appointed to a local board of trustees for a community college. Any member currently serving on a local board of trustees for a community college may complete the term in which the member is serving.

Group One – four trustees, elected by the board of education of the public school administrative unit located in the administrative area of the institution. If there are two or more public school administrative units, whether city or county units, or both, located within the administrative area, the trustees shall be elected jointly by all of the boards of education of those units, each board having one vote in the election of each trustee, except as provided in G.S. 115D-59. No board of education shall elect a member of the board of education or any person employed by the board of education to serve as a trustee, however, any such person currently serving on a board of trustees shall be permitted to fulfill the unexpired portion of the trustee's current term.

Group Two – four trustees, elected by the board of commissioners of the county in which the institution is located. Provided, however, if the administrative area of the institution is composed of two or more counties, the trustees shall be elected jointly by the boards of commissioners of all those counties, each board having one vote in the election of each trustee. Provided, also, the county commissioners of the county in which the community college has established a satellite campus may elect an additional two members if the board of trustees of the community college agrees. No more than one trustee from Group Two may be a member of a board of county commissioners. Should the boards of education or the boards of commissioners involved be unable to agree on one or more trustees the senior resident superior court judge in the superior court district or set of districts as defined in G.S. 7A-41.1 where the institution is located shall fill the position or positions by appointment.

Group Three – four trustees, appointed by the Governor.

Group Four – the president of the student government or the chairman of the executive board of the student body of each community college established pursuant to G.S. 115D shall be an ex officio nonvoting member of the board of trustees of each said institution."";

and by renumbering the remaining Section accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____
ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 806*
Committee Substitute Favorable 4/30/09
Committee Substitute #2 Favorable 5/11/09

Short Title: Notice on Liens for HOA Assessments. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A HOMEOWNERS ASSOCIATION MAKE REASONABLE AND DILIGENT EFFORTS TO LOCATE AND NOTIFY A LOT OWNER UNDER THE PLANNED COMMUNITY ACT OR A UNIT OWNER UNDER THE CONDOMINIUM ACT PRIOR TO FILING A CLAIM OF LIEN FOR ASSESSMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47F-3-116 reads as rewritten:

"**§ 47F-3-116. Lien for assessments.**

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this section or G.S. 47F-3-120.

(e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the lot owner in the association's records. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the lot owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters, and no smaller than the largest print used elsewhere in the document: **'THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW.'** The claim of lien must be sent by first-class mail to the property address, and if different, to the mailing address of the lot owner. The association must make reasonable and diligent efforts to ensure that the lot owner receives actual notice of the claim of lien. The

person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the efforts made to ensure that the lot owner received actual notice."

SECTION 2. G.S. 47C-3-116 reads as rewritten:

"**§ 47C-3-116. Lien for assessments.**

(a) Any assessment levied against a unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. Unless the declaration otherwise provides, fees, charges, late charges and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any unit owner unless the fee is expressly allowed in the declaration. Any lien secured by debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the unit) recorded before the docketing of the lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments or charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing thereof in the office of the clerk of superior court.

(d) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the unit owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or proceedings authorized under subsection (d) of this section or G.S. 47C-4-117.

(e1) A unit owner may not be required to pay attorneys' fees and court costs until the unit owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the unit owner in the association's records. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current

mailing address. The notice shall set out the outstanding balance due as of the date of the notice and state that the unit owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the unit owner pays the outstanding balance within this period, then the unit owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the unit owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the unit owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the unit owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such unit which became due prior to acquisition of title to such unit by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners including such purchaser, and its heirs, successors and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters, and no smaller than the largest print used elsewhere in the document: **'THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW.'** The claim of lien must be sent by first-class mail to the property address, and if different, to the mailing address of the lot owner. The association must make reasonable and diligent efforts to ensure that the lot owner receives actual notice of the claim of lien. The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the efforts made to ensure that the lot owner received actual notice."

SECTION 3. This act becomes effective October 1, 2009, and applies to claims of lien filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 806*
Committee Substitute Favorable 4/30/09
Committee Substitute #2 Favorable 5/11/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H806-CSRW-66 [v.6]

8/3/2009 5:23:45 PM

Short Title: Notice on Liens for HOA Assessments. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A HOMEOWNERS ASSOCIATION MAKE REASONABLE AND DILIGENT EFFORTS TO LOCATE AND NOTIFY A LOT OWNER UNDER THE PLANNED COMMUNITY ACT OR A UNIT OWNER UNDER THE CONDOMINIUM ACT PRIOR TO FILING A CLAIM OF LIEN FOR ASSESSMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47F-3-116 reads as rewritten:

"**§ 47F-3-116. Lien for assessments.**

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due by first class mail to the address of the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. If the lot owner is a corporation, the statement shall also be sent by first class mail to the mailing address of the registered agent for the corporation. Unless the declaration otherwise provides, fees, charges, late charges, and other charges imposed pursuant to G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any lot owner unless the fee is expressly allowed in the

declaration. Any lien securing a debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the lot owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the lot owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or to proceedings authorized under subsection (d) of this section or G.S. 47F-3-120.

(e1) A lot owner may not be required to pay attorneys' fees and court costs until the lot owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the lot owner in the association's records. The association must make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address. The notice shall set out the outstanding balance due as of the date of the notice and state that the lot owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the lot owner pays the outstanding balance within this period, then the lot owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the lot owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the lot owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the lot owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters, and no smaller than the largest print used elsewhere in the document: **'THIS DOCUMENT CONSTITUTES A LIEN AGAINST YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW.'** The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to all of the following: G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and by mailing a copy of the lien by regular, first class mail, postage prepaid to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9)."

SECTION 2. G.S. 47C-3-116 reads as rewritten:

"§ 47C-3-116. Lien for assessments.

(a) Any assessment levied against a unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that unit when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the unit is located in the manner provided herein. Prior to filing a claim of lien, the association must make reasonable and diligent efforts to ensure that its records contain the unit owner's current mailing address. No fewer than 15 days prior to filing the lien, the association shall mail a statement of the assessment amount due by first class mail to the address of the physical address of the unit and the unit owner's address of record with the association, and, if different, to the address for the unit owner shown on the county tax records and the county real property records for the unit. If the unit owner is a corporation, the statement shall also be sent by first class mail to the mailing address of the registered agent for the corporation. Unless the declaration otherwise provides, fees, charges, late charges and other charges imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are enforceable as assessments under this section. Except as provided in subsections (a1) and (a2) of this section, the association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes.

(a1) An association may not foreclose an association assessment lien under Article 2A of Chapter 45 of the General Statutes if the debt securing the lien consists solely of fines imposed by the association, interest on unpaid fines, or attorneys' fees incurred by the association solely associated with fines imposed by the association. The association, however, may enforce the lien by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(a2) An association shall not levy, charge, or attempt to collect a service, collection, consulting, or administration fee from any unit owner unless the fee is expressly allowed in the declaration. Any lien secured by debt consisting solely of these fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the General Statutes.

(b) The lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or

deed of trust on the unit) recorded before the docketing of the lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments or charges against the unit. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing thereof in the office of the clerk of superior court.

(d) This section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party. If the unit owner does not contest the collection of debt and enforcement of a lien after the expiration of the 15-day period following notice as required in subsection (e1) of this section, then reasonable attorneys' fees shall not exceed one thousand two hundred dollars ($1,200), not including costs or expenses incurred. The collection of debt and enforcement of a lien remain uncontested as long as the unit owner does not dispute, contest, or raise any objection, defense, offset, or counterclaim as to the amount or validity of the debt and lien asserted or the association's right to collect the debt and enforce the lien as provided in this section. The attorneys' fee limitation in this subsection shall not apply to judicial foreclosures or proceedings authorized under subsection (d) of this section or G.S. 47C-4-117.

(e1) A unit owner may not be required to pay attorneys' fees and court costs until the unit owner is notified in writing of the association's intent to seek payment of attorneys' fees and court costs. The notice must be sent by first-class mail to the property address and, if different, to the mailing address for the unit owner in the association's records. The association must make reasonable and diligent efforts to ensure that its records contain the unit owner's current mailing address. The notice shall set out the outstanding balance due as of the date of the notice and state that the unit owner has 15 days from the mailing of the notice by first-class mail to pay the outstanding balance without the attorneys' fees and court costs. If the unit owner pays the outstanding balance within this period, then the unit owner shall have no obligation to pay attorneys' fees and court costs. The notice shall also inform the unit owner of the opportunity to contact a representative of the association to discuss a payment schedule for the outstanding balance as provided in subsection (e2) of this section and shall provide the name and telephone number of the representative.

(e2) The association, acting through its executive board and in the board's sole discretion, may agree to allow payment of an outstanding balance in installments. Neither the association nor the unit owner is obligated to offer or accept any proposed installment schedule. Reasonable administrative fees and costs for accepting and processing installments may be added to the outstanding balance and included in an installment payment schedule. Reasonable attorneys' fees may be added to the outstanding balance and included in an installment schedule only after the unit owner has been given notice as required in subsection (e1) of this section.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a unit, obtains title to the unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such unit which became due prior to acquisition of title to such unit by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners including such purchaser, and its heirs, successors and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. The first page of the claim of lien shall contain the following statement in print that is in boldface, capital letters, and no smaller than the largest print used elsewhere in the document: **'THIS DOCUMENT CONSTITUTES A LIEN AGAINST**

YOUR PROPERTY, AND IF THE LIEN IS NOT PAID, THE HOMEOWNERS ASSOCIATION MAY PROCEED WITH FORECLOSURE AGAINST YOUR PROPERTY IN LIKE MANNER AS A MORTGAGE UNDER NORTH CAROLINA LAW.' The person signing the claim of lien on behalf of the association shall attach to and file with the claim of lien a certificate of service attesting to the attempt of service on the record owner, which service shall be attempted in accordance with G.S. 1A-1, Rule 4(j) for service of a copy of a summons and a complaint. If the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to all of the following: G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and by mailing a copy of the lien by regular, first class mail, postage prepaid to the physical address of the unit and the unit owner's address of record with the association, and, if different, to the address for the unit owner shown on the county tax records and the county real property records for the unit. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9)."

SECTION 3. This act becomes effective October 1, 2009, and applies to claims of lien filed on or after that date.

HOUSE BILL 806:
Notice on Liens for HOA Assessments

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	August 3, 2009
Introduced by:	Reps. Weiss, Earle, Glazier, Cotham	**Prepared by:**	Giles S. Perry Committee Counsel
Analysis of:	PCS to Third Edition H806-CSRW-66		

SUMMARY: ***House Bill 806 (PCS) amends the North Carolina Planned Community Act and the North Carolina Condominium Act to:***

- ***require that owners' associations make efforts to ensure that its records contain the lot owner's current mailing address prior to filing the claim of lien.***
- ***require the association, no fewer than 15 days prior to filing a lien for unpaid assessments, to mail a statement of assessment to the addresses specified.***
- ***require that the claim of lien contain a conspicuous warning of the consequences of failure to pay the lien.***
- ***require the person signing the claim of lien on behalf of the association to attach to and file with the lien a certificate attesting to the attempt of service on the record owner in accordance with G.S. 1A-1, Rule 4(j).***
- ***provides that if actual service is not achieved, the association shall be deemed to have met the requirements set out for service, if specified methods of service are attempted.***

[As introduced, this bill was identical to S961, as introduced by Sen. Nesbitt, which is currently in Senate Judiciary I.]

CURRENT LAW:

Under current law, when any homeowner or unit owner assessments levied against a lot or unit remain unpaid for 30 days, the association is authorized to file a claim of lien against the property in the office of the clerk of superior court. The law also provides that the association may use the power of sale foreclosure statute under Article 2A of Chapter 45 to enforce the lien.

BILL ANALYSIS: Section-by-section analysis of H 806(PCS):

Section 1 amends the North Carolina Planned Community Act:

- to require the homeowners' association to make reasonable and diligent efforts to ensure that its records contain the lot owner's current mailing address prior to filing the claim of lien. This requirement is also added to the provision authorizing payment of attorney's fees and court costs by the lot owner, if the owner has been notified of the associations' intent to seek them.
- to require the association, no fewer than fifteen days prior to the filing of the lien for unpaid assessments, mail a statement of the assessment amount by first class mail to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. If the lot owner is a corporation, the statement shall also be sent by first class mail the mailing address of the registered agent for the corporation.

- to require that the claim of lien contain a conspicuous warning that if the lien is not paid, the association may proceed with foreclosure against the property.
- require the person signing the claim of lien on behalf of the association to attach to and file with the lien a certificate attesting to the attempt of service on the record owner.
- provides that if the actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted pursuant to all of the following: G.S. 1A-1, Rule 4(j)(1) c., d., or e.; and by mailing a copy of the lien by regular, first class mail, postage prepaid to the physical address of the lot and the lot owner's address of record with the association, and, if different, to the address for the lot owner shown on the county tax records and the county real property records for the lot. In the event that the owner of record is not a natural person, and actual service is not achieved, the person signing the claim of lien on behalf of the association shall be deemed to have met the requirements of this subsection if service has been attempted once pursuant to the applicable provisions of G.S. 1A-1, Rule 4(j)(3) through G.S. 1A-1, Rule 4(j)(9).

Section 2 makes identical changes to the North Carolina Condominium Act.

EFFECTIVE DATE: This act becomes effective October 1, 2009, and applies to claims of lien filed on or after that date.

BACKGROUND:

G.S. 1A-4 Rule 4. Process

(j) Process – Manner of service to exercise personal jurisdiction. – In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

(1) Natural Person. – Except as provided in subdivision (2) below, upon a natural person by one of the following:

a. By delivering a copy of the summons and of the complaint to the natural person or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

e. By mailing a copy of the summons and of the complaint by signature confirmation as provided by the United States Postal Service, addressed to the party to be served, and delivering to the addressee.

(2) Natural Person under Disability. – Upon a natural person under disability by serving process in any manner prescribed in this section (j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.

a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

b. If the plaintiff actually knows that a person under disability is under guardianship of any kind, process shall be served separately upon his guardian in any manner applicable and appropriate under this section (j). If the plaintiff does not actually know that a guardian has been

appointed when service is made upon a person known to him to be incompetent to have charge of his affairs, then service of process must be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

(3) The State. – Upon the State by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt. As used in this subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(4) An Agency of the State. –

a. Upon an agency of the State by personally delivering a copy of the summons and of the complaint to the process agent appointed by the agency in the manner hereinafter provided; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to said process agent; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the process agent, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. Every agency of the State shall appoint a process agent by filing with the Attorney General the name and address of an agent upon whom process may be served.

c. If any agency of the State fails to comply with paragraph b above, then service upon such agency may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or to a deputy or assistant attorney general; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General, or to a deputy or assistant attorney general; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or to a deputy or assistant attorney general, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

d. For purposes of this rule, the term "agency of the State" includes every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina, but does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State, county or city boards of education, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly.

(5) Counties, Cities, Towns, Villages and Other Local Public Bodies. –

a. Upon a city, town, or village by personally delivering a copy of the summons and of the complaint to its mayor, city manager or clerk; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its mayor, city manager or clerk; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the mayor, city manager, or clerk, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. Upon a county by personally delivering a copy of the summons and of the complaint to its county manager or to the chairman, clerk or any member of the board of commissioners for such county; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to its county manager or to the chairman, clerk, or any member of this board of commissioners for such county; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the county manager or to the chairman, clerk, or any member of the board of commissioners of that county, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

c. Upon any other political subdivision of the State, any county or city board of education, or other local public district, unit, or body of any kind (i) by personally delivering a copy of the summons and of the complaint to an officer or director thereof, (ii) by personally delivering a copy of the summons and of the complaint to an agent or attorney-in-fact authorized by

appointment or by statute to be served or to accept service in its behalf, (iii) by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), or (iv) by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or attorney-in-fact as specified in (i) and (ii), delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

d. In any case where none of the officials, officers or directors specified in paragraphs a, b and c can, after due diligence, be found in the State, and that fact appears by affidavit to the satisfaction of the court, or a judge thereof, such court or judge may grant an order that service upon the party sought to be served may be made by personally delivering a copy of the summons and of the complaint to the Attorney General or any deputy or assistant attorney general of the State of North Carolina; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the Attorney General or any deputy or assistant attorney general of the State of North Carolina, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(6) Domestic or Foreign Corporation. – Upon a domestic or foreign corporation by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director or agent to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, or agent to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(7) Partnerships. – Upon a general or limited partnership:

a. By delivering a copy of the summons and of the complaint to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; by mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf; or by depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to any general partner or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, delivering to the addressee, and obtaining a delivery receipt; or by leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

b. If relief is sought against a partner specifically, a copy of the summons and of the complaint must be served on such partner as provided in this section (j).

(8) Other Unincorporated Associations and Their Officers. – Upon any unincorporated association, organization, or society other than a partnership by one of the following:

a. By delivering a copy of the summons and of the complaint to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the officer, director, agent or member of the governing body to be served as specified in paragraphs a and b.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the officer, director, agent, or member of the governing body to be served as specified in paragraphs a. and b., delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

(9) Foreign States and Their Political Subdivisions, Agencies, and Instrumentalities. – Upon a foreign state or a political subdivision, agency, or instrumentality thereof, pursuant to 28 U.S.C. § 1608

Karen Cochrane-Brown of the Research Division contributed to this summary.

H806-SMRW-180(CSRW-66) v3

Attachment 11

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 806 DATE 8-4-09

S. B. No. _____ Amendment No. 1

COMMITTEE SUBSTITUTE _____ (to be filled in by Principal Clerk)

Rep.) Stein
Sen.)

1 moves to amend the bill on page 3, lines 14-15
2 ( ) WHICH CHANGES THE TITLE
3 by and page 5, lines 9-10
4
5 by rewriting those lines to read:
6
7 " this subsection if service has been attempted
8 pursuant to both of the following: (i) G.S.
9 1A-1, Rule (4)(j)(1) c., d., or e.; and (ii)
10 by mailing a copy of the lien by regular, first
11 class mail, postage prepaid "
12
13
14
15
16
17
18
19

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 806*

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

H806-ARW-16 [v.1]

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

Date _____ ,2009

Senator Stein

moves to amend the bill on page 1, line 15, and page 3, line 31,

by deleting the phrase " the address of ".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

SENATE JUDICIARY ICOMMITTEE
(Civil)

August 4, 2009
15 Minutes after Senate Adjourns – Room 1027

MINUTES

The Senate Judiciary I Committee met Tuesday Afternoon, August 4, 2009 after the adjournment of the Senate, in Room 1027 of the Legislative Building. Senators present were Committee Chairman Martin L. Nesbitt. Vice-Chairmen Dan Clodfelter, Pete Brunstetter, R. C. Soles, and Josh Stein, members, Senators Charlie Albertson, Phil Berger, Dan Blue, Andrew Brock, Harry Brown, Ellie Kinnaird, Floyd McKissick, and Tony Rand, Staff Counsel Erika Churchill, Giles Perry, Susan Sitze and Bill Patterson, Committee Assistants Jan Lee and Jessica Bennett.

Chairman Martin Nesbitt called the meeting to order and recognized Staff Counsel Erika Churchill to explain H.B. 1111 – Campaign Finance Amendments. A Proposed Senate Committee Substitute for H.B. 1111 was distributed to the committee members and Senator Clodfelter moved for adoption to be discussed. Senator Clodfelter said this is Representative Goodwin's bill and she is in surgery today and requested that he steer it through the committee for her. He explained the PSCS for H.B. 1111 and Erika Churchill assisted with the explanation. During the discussion of the bill by the committee members Senator Brunstetter sent forth an amendment and it was adopted. Senator Rand moved the amendment be rolled into the bill and the PSCS be given a favorable report and unfavorable to the bill. It passed and Senator Clodfelter will handle the bill on the Senate Floor.

Staff Counsel Susan Sitze was recognized to explain H.B. 1329 – Consolidate Expunction Statutes. Susan explained the bill and during discussion of the committee Senator Soles sent forth an amendment and moved for adoption. The amendment was adopted and Senator McKissick moved the amendment be rolled into the bill and the bill be given a favorable report and unfavorable to the original bill. It passed and Senator Soles will handle the bill on the Floor of the Senate.

Chairman Nesbitt recognized Staff Counsel Susan Sitze to explain H.B. 1260 – Voter Pre-registration and Education. A Proposed Senate Committee Substitute for H.B. 1260 was distributed to the committee members and Senator Berger moved it be adopted for discussion. Susan explained the PSCS for H.B. 1260 and there was discussion and questions by the committee members. Senator Berger made a motion to give the Proposed Senate Committee Substitute for H.B. 1260 a favorable report and unfavorable to the original bill and it passed. Senator Berger will handle it on the Senate Floor.

Chairman Nesbitt asked Senator Soles to preside. Senator Soles ask who would be explaining H.B. 1312 – Omnibus Highway/MV Statute Changes. A Proposed Senate Committee Substitute for H.B. 1312 was distributed and on motion by Senator Albertson

it was adopted for discussion. Staff Counsel Giles Perry explained the PSCS for H.B. 1312 and Senator Nesbitt assisted. Senator Brunstetter made a motion to give the Proposed Senate Committee Substitute for H.B. 1312 a favorable report and unfavorable to the original bill. It passed.

The meeting was adjourned.

Copies of H.B. 1111, PSCS for H.B. 1111, Bill Analysis for H.B. 1111, Amendment for H.B. 1111, H.B. 1329, Amendment for H.B. 1329, PSCS for H.B. 1260, Bill Analysis for PCS for H.B. 1260, H.B. 1312, PSCS for H.B. 1312, are attached to these Minutes as Attachments 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 respectively.

Respectfully Submitted,

Martin Nesbitt

Senator Martin L. Nesbitt
Chairman

Janette W. Lee

Janette W. Lee
Committee Assistant

AGENDA
Senate Judiciary I Committee

Senator Martin L. Nesbitt, Chairman
Senator Pete Brunstetter, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman
Senator Josh Stein, Vice Chairman

Tuesday, August 4, 2009
15 Minutes after the Senate Adjourns
1027 Legislative Building

Welcome and Opening Remarks

Introduction of Pages

Bills to be considered

HB 1111	Campaign Finance Amendments.	Representative Goodwin
HB 1260	Voter Pre-registration and Education	Representative Bryant
HB 1312	Omnibus Highway/MV Statute Changes.	Representative Martin
HB 1329	Consolidate Expunction Statutes.	Representative Bordsen Representative Adams Representative Bryant Representative Moore

Other Business

Adjournment

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 1111
Committee Substitute Favorable 4/23/09
Committee Substitute #2 Favorable 5/4/09

Short Title: Campaign Finance Amendments. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE MORE SPECIFIC WHEN AN INDIVIDUAL BECOMES A "CANDIDATE" FOR CAMPAIGN FINANCE LAW AND TO DEFINE AND PROVIDE FOR DISCLOSURE OF FUNDING FOR "CANDIDACY EXPLORATION"; TO USE DIFFERENT TERMINOLOGY AND DEFINE TERMS IN THE LEGAL EXPENSE FUNDS STATUTE AND CLARIFY CANDIDATE CONTRIBUTIONS TO LEGAL EXPENSE FUNDS; TO REVISE THE WAY THE DEFINITIONS OF "CONTRIBUTION" AND "EXPENDITURE" DEAL WITH PROMISES; AND TO REQUIRE THAT A TREASURER FOR A NORTH CAROLINA COMMITTEE BE A NORTH CAROLINA RESIDENT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 163-278.6(4) reads as rewritten:

"(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has taken positive action for the purpose of bringing about that individual's nomination or election to public office. Examples of positive action include:

a. ~~filed~~ Filing a notice of candidacy or a petition requesting to be a candidate, ~~or~~

b. ~~has been certified~~ Being certified as a nominee of a political party for a vacancy,

c. ~~has otherwise qualified~~Otherwise qualifying as a candidate in a manner authorized by law, ~~or~~

d. Making a public announcement of a definite intent to run for public office in a particular election, or

e. ~~has received~~Receiving funds or ~~made~~ making payments or ~~has given~~giving the consent for anyone else to receive funds or transfer anything of value for the purpose of ~~exploring or~~ bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value.

Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held. Special definitions of "candidate" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z."

SECTION 1.(b) G.S. 163-278.6 is amended by adding a new subdivision to read:

"(4a) The term "candidacy exploration" means actions taken by an individual to explore the feasibility of becoming a candidate prior to taking positive action for the purpose of bringing about that individual's nomination or election to public office."

SECTION 1.(c) Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.7B. Candidacy exploration.**

(a) Record Keeping. – An individual who engages in candidacy exploration shall keep records of all funds received and expended for that purpose and shall retain those records for a minimum of two years.

(b) Reporting. – An individual without an active candidate campaign committee who, subsequent to candidacy exploration, becomes a candidate shall include as a part of the organizational report submitted pursuant to G.S. 163-278.9(a)(1) a report of all funds received and expended for the purpose of candidacy exploration. An individual with an active candidate campaign committee who engages in candidacy exploration shall include a report of all funds received and expended for the purpose of candidacy exploration with reports required pursuant to G.S. 163-278.9."

SECTION 2.(a) G.S. 163-278.300 reads as rewritten:

"**§ 163-278.300. Definitions.**

As used in this Article, the following terms mean:

(1) Board. – The State Board of Elections.

(2) ~~Contribution.~~ Legal expense donation. – ~~As defined in G.S. 163-278.6.~~ A legal expense donation means any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, subscription of money, or anything of value whatsoever, and any contract, agreement, or other obligation to make a contribution to a legal expense fund for a permitted use as provided in G.S. 163-278.320. The term ~~"contribution"~~"legal expense donation" does not include either of the following:

a. The provision of legal services to an elected officer by the State or any of its political subdivisions when those services are authorized or required by law, or

b. The provision of free or pro bono legal advice or legal services, provided that any costs incurred or expenses advanced for which clients are liable under other provisions of law shall be deemed ~~contributions.~~ legal expense donations.

(3) Elected officer. – Any individual serving in or seeking a public office. An individual is seeking a public office when that individual has filed any notice, petition, or other document required by law or local act as a condition of election to public office. An individual continues to be an elected officer for purposes of this Article as long as a legal action commenced while the individual was an elected officer continues. If a legal action is commenced after an individual ceases to serve in or seek public office but the legal action concerns subject matter in the individual's official capacity as an elected officer, for purposes of this Article, that individual is an elected officer as long as that legal action continues.

(4) Expenditure. – ~~As defined in G.S. 163-278.6.~~ An expenditure means any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge, subscription of money, anything of value whatsoever, and any contract, agreement, promise, or other obligation to make an expenditure, by a legal defense fund for a permitted use as provided in

G.S. 163-278.320. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a legal expense donation.

(5) Legal action. – A formal dispute in a judicial, legislative, or administrative forum, including but not limited to, a civil or criminal action filed in a court, a complaint or protest filed with a board of elections, an election contest filed under Article 3 of Chapter 120 of the General Statutes or G.S. 163-182.13A, or a complaint filed with the State Ethics Commission or Legislative Ethics Committee. The term "legal action" also includes investigations made or conducted before the commencement of any formal proceedings. The term "legal action" does not include the election itself or the campaign for election.

(6) Legal expense fund. – Any collection of money for the purpose of funding a legal action, or a potential legal action, taken by or against an elected officer in that elected officer's official capacity.

(7) Official capacity. – Related to or resulting from the campaign for public office or related to or resulting from holding public office. "Official capacity" is not limited to "scope and course of employment" as used in G.S. 143-300.3.

(8) Public office. – As defined in G.S. 163-278.6.

(9) Treasurer. – An individual appointed by an elected officer or other individual, or group of individuals collecting money for a legal expense fund."

SECTION 2.(b) G.S. 163-278.301 reads as rewritten:

"**§ 163-278.301. Creation of legal expense funds.**

(a) An elected officer, or another individual or group of individuals on the elected officer's behalf, shall create a legal expense fund if given a ~~contribution,~~ legal expense donation, other than from that elected officer's self, spouse, parents, brothers, or sisters, for any of the following purposes:

(1) To fund an existing legal action taken by or against the elected officer in that elected officer's official capacity.

(2) To fund a potential legal action taken by or against an elected officer in that elected officer's official capacity.

(b) This section shall not apply to any ~~contribution~~ payment to the State or any of its political subdivisions.

(c) The legal expense fund shall comply with all provisions of this Article.

(d) If an elected officer funds legal actions entirely from that elected officer's own ~~contributions or the contributions~~ legal expense donations or those of the elected officer's spouse, parents, brothers, or sisters, that elected officer is not required to create a legal expense fund. If a legal expense fund accepts ~~contributions~~ legal expense donations as described in subsection (a) of this section, that legal expense fund shall report the elected officer's own ~~contributions~~ legal expense donations and those of those family members along with the other ~~contributions~~ legal expense donations in accordance with G.S. 163-278.310.

(e) No more than one legal expense fund shall be created by or for an elected officer for the same legal action. Legal actions arising out of the same set of transactions and occurrences are deemed the same legal action for purposes of this subsection. A legal expense fund created for one legal action or potential legal action may be kept open by or on behalf of the elected officer for subsequent legal actions or potential legal actions.

(f) Contractual arrangements, including liability insurance, or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying, are not ~~"contributions"~~"legal expense donations" for purposes of this Article. Use of such contractual arrangements to fund legal actions does not by itself require the elected officer to

create a legal expense fund. If a legal expense fund has been created pursuant to subsection (a) of this section, such contractual arrangements shall be reported as expenditures.

(g) A violation of this Article shall be punishable as a Class 1 misdemeanor."

SECTION 2.(c) G.S. 163-278.307 reads as rewritten:

"**§ 163-278.307. Detailed accounts to be kept by treasurer.**

(a) The treasurer of each legal expense fund shall keep detailed accounts, current within seven calendar days after the date of receiving a ~~contribution~~ legal expense donation or making an expenditure, of all ~~contributions~~ legal expense donations received and all expenditures made by or on behalf of the legal expense fund.

(b) Accounts kept by the treasurer of a legal expense fund or the accounts of a treasurer or legal expense fund at any bank or other depository may be inspected by a member, designee, agent, attorney, or employee of the Board who is making an investigation pursuant to G.S. 163-278.22.

(c) For purposes of this section, "detailed accounts" shall mean at least all information required to be included in the quarterly report required under this Article.

(d) When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article, any report of the legal expense shall be considered in compliance with this Article and shall not be the basis for criminal prosecution or the imposition of civil penalties. The State Board of Elections shall adopt rules to implement this subsection."

SECTION 2.(d) G.S. 163-278.308 reads as rewritten:

"**§ 163-278.308. Reports filed with Board.**

(a) The treasurer of each legal expense fund shall file with the Board the following reports:

(1) Organizational report. – The report required under G.S. 163-278.309.

(2) Quarterly report. – The report required under G.S. 163-278.310.

(b) Any report or attachment required by this Article must be filed under certification of the treasurer as true and correct to the best of the knowledge of that officer.

(c) The organizational report shall be filed within 10 calendar days of the creation of the legal expense fund. All quarterly reports shall be filed with the Board no later than 10 business days after the end of each calendar quarter.

(d) Treasurers shall electronically file each report required by this section that shows a cumulative total for the quarter in excess of five thousand dollars ($5,000) in ~~contributions~~ legal expense donations or expenditures, according to rules adopted by the Board. The Board shall provide the software necessary to the treasurer to file the required electronic report at no cost to the legal expense fund.

(e) Any statement required to be filed under this Article shall be signed and certified as true and correct by the treasurer and shall be certified as true and correct to the best of the treasurer's knowledge. The elected officer creating the legal expense fund, or the other individual or group of individuals creating the legal expense fund on the elected officer's behalf, shall certify as true and correct to the best of their knowledge the organizational report and appointment of the treasurer. A certification under this Article shall be treated as under oath, and any individual making a certification under this Article knowing the information to be untrue is guilty of a Class I felony."

SECTION 2.(e) G.S. 163-278.310 reads as rewritten:

"**§ 163-278.310. Quarterly report.**

The treasurer of each legal expense fund shall be required to file a quarterly report with the Board containing all of the following:

(1) ~~Contributions.~~ Legal expense donations. – The name and complete mailing address of each ~~contributor,~~ donor, the amount of the ~~contribution,~~ legal expense donation, the principal occupation of the ~~contributor,~~ donor, and the

date the ~~contribution~~ legal expense donation was received. The total sum of all ~~contributions~~ legal expense donations to date shall also be plainly exhibited. The treasurer is not required to report the name of any ~~contributor~~ donor making a total ~~contribution~~ legal expense donation of fifty dollars ($50.00) or less in a calendar quarter, but shall instead report the fact that the treasurer has received a total ~~contribution~~ legal expense donation of fifty dollars ($50.00) or less, the amount of the ~~contribution,~~ legal expense donation, and the date of receipt.

(2) Expenditures. – A list of all expenditures made by or on behalf of the legal expense fund. The report shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall also be plainly exhibited. The payee shall be the entity to whom the legal expense fund is obligated to make the expenditure. If the expenditure is to a financial institution for revolving credit or a reimbursement for a payment to a financial institution for revolving credit, the statement shall also include a specific itemization of the goods and services purchased with the revolving credit. If the obligation is for more than one good or service, the statement shall include a specific itemization of the obligation so as to provide a reasonable understanding of the obligation.

(3) Loans. – All proceeds from loans shall be recorded separately with a detailed analysis reflecting the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers."

SECTION 2.(f) G.S. 163-278.316 reads as rewritten:

"**§ 163-278.316. Limitations on ~~contributions.~~ legal expense donations.**

(a) No entity shall make, and no treasurer shall accept, any monetary ~~contribution~~ legal expense donation in excess of fifty dollars ($50.00) unless such ~~contribution~~ legal expense donation is in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. No ~~contribution~~ legal expense donation in the form of check, draft, money order, credit card charge, debit, or other noncash method may be made or accepted unless it contains a specific designation of the intended ~~contributee~~ donee chosen by the ~~contributor.~~ donor.

(b) The State Board of Elections may adopt rules as to the reporting and verification of any method of ~~contribution~~ legal expense donation payment allowed under this Article. For ~~contributions~~ legal expense donation by money order, the State Board shall adopt rules to ensure an audit trail for every ~~contribution~~ legal expense donation so that the identity of the ~~contributor~~ donor can be determined.

(c) For any ~~contribution~~ legal expense donation made by credit card, the credit card account number of a ~~contributor~~ donor is not a public record.

(d) No legal expense fund shall accept ~~contributions~~ legal expense donations from a corporation, labor union, insurance company, professional association, or business entity in excess of four thousand dollars ($4,000) per calendar year. No legal expense fund shall accept ~~contributions~~ legal expense donations from a corporation which when totaled with ~~contributions~~ legal expense donations to the same legal expense fund for the same calendar year from any affiliated corporation exceed the per calendar year ~~contribution~~ legal expense donation limits for that legal expense fund. No legal expense fund shall accept ~~contributions~~ legal expense donations from a labor union which when totaled with ~~contributions~~ legal expense donations to the same legal expense fund for the same calendar year from any affiliated labor union exceed the per calendar year ~~contribution~~ legal expense donation limits for that legal expense fund. No legal expense fund shall accept ~~contributions~~ legal expense donations from an insurance company which when totaled with ~~contributions~~ legal expense

donations to the same legal expense fund for the same calendar year from any affiliated insurance company exceed the per calendar year ~~contribution~~ legal expense donation limits for that legal expense fund. No legal expense fund shall accept ~~contributions~~ legal expense donations from a professional association which when totaled with ~~contributions~~ legal expense donations to the same legal expense fund for the same calendar year from any affiliated professional association exceed the per calendar year ~~contribution~~ legal expense donation limits for that legal expense fund. No legal expense fund shall accept ~~contributions~~ legal expense donations from a business entity which when totaled with ~~contributions~~legal expense donations to the same legal expense fund for the same calendar year from any affiliated business entity exceed the per calendar year ~~contribution~~ legal expense donation limits for that legal expense fund. The definitions of corporation, labor union, insurance company, professional association, and business entity are the same as those in G.S. 163-278.6. This subsection does not apply to political committees created pursuant to G.S. 163-278.19(b), except that no legal expense fund shall accept a ~~contribution~~ legal expense donation which would be a violation of G.S. 163-278.13B if accepted by a candidate or political committee. This subsection does not apply to corporations permitted to make contributions in G.S. 163-278.19(f).

(e) No entity shall make a ~~contribution~~ legal expense donation to a legal expense fund that the legal expense fund could not accept under subsection (d) of this section."

SECTION 2.(g) G.S. 163-278.320 reads as rewritten:

"**§ 163-278.320. Permitted uses of legal expense funds.**

(a) A legal expense fund may be used for reasonable expenses actually incurred by the elected officer in relation to a legal action or potential legal action brought by or against the elected officer in that elected officer's official capacity. The elected officer's campaign itself shall not be funded from a legal expense fund.

(b) Upon closing a legal expense account, the treasurer shall distribute the remaining monies in the legal expense fund to any of the following:

(1) The Indigent Persons' Attorney Fee Fund under Article 36 of Chapter 7A of the General Statutes.

(2) The North Carolina State Bar for the provision of civil legal services for indigents.

(3) ~~Contributions~~ Payments to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.

(4) To return all or a portion of a ~~contribution~~ legal expense donation to the ~~contributor.~~donor.

(5) Payment to the Escheat Fund established by Chapter 116B of the General Statutes."

SECTION 2.(h) G.S. 163-278.16B(a) reads as rewritten:

"(a) A candidate or candidate campaign committee may use contributions only for the following purposes:

(1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.

(2) Expenditures resulting from holding public office.

(3) Donations to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.

(4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.

(5) Contributions to another candidate or candidate's campaign committee.

(6) To return all or a portion of a contribution to the contributor.

(7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.

(8) Payment to the Escheat Fund established by Chapter 116B of the General Statutes.

(9) Legal expense donation not in excess of four thousand dollars ($4,000) to a legal expense fund established pursuant to Article 22M of Chapter 163 of the General Statutes."

SECTION 3.(a) G.S. 163-278.6(6) reads as rewritten:

"(6) The terms "contribute" or "contribution" mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, ~~promise~~ or other ~~obligation, whether or not legally enforceable,~~ obligation to make a contribution. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term "contribution" does not include an "independent expenditure." If:

a. Any individual, person, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any disbursement for any electioneering communication, as defined in G.S. 163-278.80(2) and (3) and G.S. 163-278.90(2) and (3); and

b. That disbursement is coordinated with a candidate, an authorized political committee of that candidate, a State or local political party or committee of that party, or an agent or official of any such candidate, party, or committee

that disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party."

SECTION 3.(b) G.S. 163-278.6(9) reads as rewritten:

"(9) The terms "expend" or "expenditure" mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, promise or other ~~obligation, whether or not legally enforceable,~~ obligation to make an expenditure, to support or oppose the nomination, election, or passage of one

or more clearly identified candidates, or ballot measure. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a contribution. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term "expenditure" also includes any payment or other transfer made by a candidate, political committee, or referendum committee."

SECTION 4. G.S. 163-278.7(a) reads as rewritten:

"(a) Each candidate, political committee, and referendum committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. Only an individual who resides in North Carolina shall be appointed as a treasurer. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided."

SECTION 5. This act becomes effective December 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1111
Committee Substitute Favorable 4/23/09
Committee Substitute #2 Favorable 5/4/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1111-CSST-75 [v.4]

Short Title: Campaign Finance Amendments. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE MORE SPECIFIC WHEN AN INDIVIDUAL BECOMES A "CANDIDATE" FOR CAMPAIGN FINANCE LAW; TO USE DIFFERENT TERMINOLOGY AND DEFINE TERMS IN THE LEGAL EXPENSE FUNDS STATUTE AND CLARIFY CANDIDATE CONTRIBUTIONS TO LEGAL EXPENSE FUNDS; TO REVISE THE WAY THE DEFINITIONS OF "CONTRIBUTION" AND "EXPENDITURE" DEAL WITH PROMISES; TO REQUIRE THAT A TREASURER FOR A NORTH CAROLINA COMMITTEE BE A NORTH CAROLINA RESIDENT; TO REDUCE THE THREE-THOUSAND-DOLLAR OR LESS EXEMPTION FOR CAMPAIGN REPORTING FOR CANDIDATES FOR CERTAIN LOCAL ELECTED OFFICES TO ONE THOUSAND DOLLARS OR LESS AND TO ELIMINATE THE THREE-THOUSAND-DOLLAR OR LESS EXEMPTION FOR CAMPAIGN REPORTING FOR CANDIDATES FOR ALL OTHER OFFICES; TO EXEMPT COMMERCIAL COMMUNICATIONS FROM THE ELECTIONEERING COMMUNICATION LAWS AND CANDIDATE-SPECIFIC COMMUNICATION LAWS; TO AUTHORIZE AN OPTIONAL PROCESS TO DETERMINE WHETHER OR NOT A COMMUNICATION IS AN ELECTIONEERING COMMUNICATION OR A CANDIDATE-SPECIFIC COMMUNICATION PRIOR TO ITS DISTRIBUTION; AND TO MAKE OTHER TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.6(4) reads as rewritten:

"(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has taken positive action for the purpose of bringing about that individual's nomination or election to public office. Examples of positive action include:

a. ~~filed~~ Filing a notice of candidacy or a petition requesting to be a candidate, ~~or~~

b. ~~has been certified~~ Being certified as a nominee of a political party for a vacancy,

c. ~~has otherwise qualified~~Otherwise qualifying as a candidate in a manner authorized by law, ~~or~~

d. Making a public announcement of a definite intent to run for public office in a particular election, or

e. ~~has received~~Receiving funds or ~~made~~ making payments or ~~has given~~giving the consent for anyone else to receive funds or transfer anything of value for the purpose of ~~exploring or~~ bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value.

Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held. Special definitions of "candidate" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z."

SECTION 2.(a) G.S. 163-278.300 reads as rewritten:

"**§ 163-278.300. Definitions.**

As used in this Article, the following terms mean:

(1) Board. – The State Board of Elections.

(2) ~~Contribution.~~ Legal expense donation. – ~~As defined in G.S. 163-278.6.~~A legal expense donation means any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, subscription of money, or anything of value whatsoever, and any contract, agreement, or other obligation to make a contribution to a legal expense fund for a permitted use as provided in G.S. 163-278.320. The term ~~"contribution"~~"legal expense donation" does not include either of the following:

a. The provision of legal services to an elected officer by the State or any of its political subdivisions when those services are authorized or required by law, or

b. The provision of free or pro bono legal advice or legal services, provided that any costs incurred or expenses advanced for which clients are liable under other provisions of law shall be deemed ~~contributions.~~legal expense donations.

(3) Elected officer. – Any individual serving in or seeking a public office. An individual is seeking a public office when that individual has filed any notice, petition, or other document required by law or local act as a condition of election to public office. An individual continues to be an elected officer for purposes of this Article as long as a legal action commenced while the individual was an elected officer continues. If a legal action is commenced after an individual ceases to serve in or seek public office but the legal action concerns subject matter in the individual's official capacity as an elected officer, for purposes of this Article, that individual is an elected officer as long as that legal action continues.

(4) Expenditure. – ~~As defined in G.S. 163-278.6.~~An expenditure means any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge, subscription of money, anything of value whatsoever, and any contract, agreement, promise, or other obligation to make an expenditure, by a legal defense fund for a permitted use as provided in G.S. 163-278.320. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a legal expense donation.

(5) Legal action. – A formal dispute in a judicial, legislative, or administrative forum, including but not limited to, a civil or criminal action filed in a court, a complaint or protest filed with a board of elections, an election contest filed under Article 3 of Chapter 120 of the General Statutes or

G.S. 163-182.13A, or a complaint filed with the State Ethics Commission or Legislative Ethics Committee. The term "legal action" also includes investigations made or conducted before the commencement of any formal proceedings. The term "legal action" does not include the election itself or the campaign for election.

(6) Legal expense fund. – Any collection of money for the purpose of funding a legal action, or a potential legal action, taken by or against an elected officer in that elected officer's official capacity.

(7) Official capacity. – Related to or resulting from the campaign for public office or related to or resulting from holding public office. "Official capacity" is not limited to "scope and course of employment" as used in G.S. 143-300.3.

(8) Public office. – As defined in G.S. 163-278.6.

(9) Treasurer. – An individual appointed by an elected officer or other individual or group of individuals collecting money for a legal expense fund."

SECTION 2.(b) G.S. 163-278.301 reads as rewritten:

"**§ 163-278.301. Creation of legal expense funds.**

(a) An elected officer, or another individual or group of individuals on the elected officer's behalf, shall create a legal expense fund if given a ~~contribution,~~ legal expense donation, other than from that elected officer's self, spouse, parents, brothers, or sisters, for any of the following purposes:

(1) To fund an existing legal action taken by or against the elected officer in that elected officer's official capacity.

(2) To fund a potential legal action taken by or against an elected officer in that elected officer's official capacity.

(b) This section shall not apply to any ~~contribution~~ payment to the State or any of its political subdivisions.

(c) The legal expense fund shall comply with all provisions of this Article.

(d) If an elected officer funds legal actions entirely from that elected officer's own ~~contributions or the contributions~~ legal expense donations or those of the elected officer's spouse, parents, brothers, or sisters, that elected officer is not required to create a legal expense fund. If a legal expense fund accepts ~~contributions~~ legal expense donations as described in subsection (a) of this section, that legal expense fund shall report the elected officer's own ~~contributions~~ legal expense donations and those of those family members along with the other ~~contributions~~ legal expense donations in accordance with G.S. 163-278.310.

(e) No more than one legal expense fund shall be created by or for an elected officer for the same legal action. Legal actions arising out of the same set of transactions and occurrences are deemed the same legal action for purposes of this subsection. A legal expense fund created for one legal action or potential legal action may be kept open by or on behalf of the elected officer for subsequent legal actions or potential legal actions.

(f) Contractual arrangements, including liability insurance, or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying, are not ~~"contributions"~~"legal expense donations" for purposes of this Article. Use of such contractual arrangements to fund legal actions does not by itself require the elected officer to create a legal expense fund. If a legal expense fund has been created pursuant to subsection (a) of this section, such contractual arrangements shall be reported as expenditures.

(g) A violation of this Article shall be punishable as a Class 1 misdemeanor."

SECTION 2.(c) G.S. 163-278.307 reads as rewritten:

"**§ 163-278.307. Detailed accounts to be kept by treasurer.**

(a) The treasurer of each legal expense fund shall keep detailed accounts, current within seven calendar days after the date of receiving a ~~contribution~~ legal expense donation or making an expenditure, of all ~~contributions~~ legal expense donations received and all expenditures made by or on behalf of the legal expense fund.

(b) Accounts kept by the treasurer of a legal expense fund or the accounts of a treasurer or legal expense fund at any bank or other depository may be inspected by a member, designee, agent, attorney, or employee of the Board who is making an investigation pursuant to G.S. 163-278.22.

(c) For purposes of this section, "detailed accounts" shall mean at least all information required to be included in the quarterly report required under this Article.

(d) When a treasurer shows that best efforts have been used to obtain, maintain, and submit the information required by this Article, any report of the legal expense shall be considered in compliance with this Article and shall not be the basis for criminal prosecution or the imposition of civil penalties. The State Board of Elections shall adopt rules to implement this subsection."

SECTION 2.(d) G.S. 163-278.308 reads as rewritten:

"**§ 163-278.308. Reports filed with Board.**

(a) The treasurer of each legal expense fund shall file with the Board the following reports:

(1) Organizational report. – The report required under G.S. 163-278.309.

(2) Quarterly report. – The report required under G.S. 163-278.310.

(b) Any report or attachment required by this Article must be filed under certification of the treasurer as true and correct to the best of the knowledge of that officer.

(c) The organizational report shall be filed within 10 calendar days of the creation of the legal expense fund. All quarterly reports shall be filed with the Board no later than 10 business days after the end of each calendar quarter.

(d) Treasurers shall electronically file each report required by this section that shows a cumulative total for the quarter in excess of five thousand dollars ($5,000) in ~~contributions~~ legal expense donations or expenditures, according to rules adopted by the Board. The Board shall provide the software necessary to the treasurer to file the required electronic report at no cost to the legal expense fund.

(e) Any statement required to be filed under this Article shall be signed and certified as true and correct by the treasurer and shall be certified as true and correct to the best of the treasurer's knowledge. The elected officer creating the legal expense fund, or the other individual or group of individuals creating the legal expense fund on the elected officer's behalf, shall certify as true and correct to the best of their knowledge the organizational report and appointment of the treasurer. A certification under this Article shall be treated as under oath, and any individual making a certification under this Article knowing the information to be untrue is guilty of a Class I felony."

SECTION 2.(e) G.S. 163-278.310 reads as rewritten:

"**§ 163-278.310. Quarterly report.**

The treasurer of each legal expense fund shall be required to file a quarterly report with the Board containing all of the following:

(1) ~~Contributions.~~ Legal expense donations. – The name and complete mailing address of each ~~contributor,~~ donor, the amount of the ~~contribution,~~ legal expense donation, the principal occupation of the ~~contributor,~~ donor, and the date the ~~contribution~~ legal expense donation was received. The total sum of all ~~contributions~~ legal expense donations to date shall also be plainly exhibited. The treasurer is not required to report the name of any ~~contributor~~ donor making a total ~~contribution~~ legal expense donation of fifty dollars ($50.00) or less in a calendar quarter, but shall instead report the fact that the

treasurer has received a total ~~contribution~~ legal expense donation of fifty dollars ($50.00) or less, the amount of the ~~contribution,~~ legal expense donation, and the date of receipt.

(2) Expenditures. – A list of all expenditures made by or on behalf of the legal expense fund. The report shall list the name and complete mailing address of each payee, the amount paid, the purpose, and the date such payment was made. The total sum of all expenditures to date shall also be plainly exhibited. The payee shall be the entity to whom the legal expense fund is obligated to make the expenditure. If the expenditure is to a financial institution for revolving credit or a reimbursement for a payment to a financial institution for revolving credit, the statement shall also include a specific itemization of the goods and services purchased with the revolving credit. If the obligation is for more than one good or service, the statement shall include a specific itemization of the obligation so as to provide a reasonable understanding of the obligation.

(3) Loans. – All proceeds from loans shall be recorded separately with a detailed analysis reflecting the amount of the loan, the source, the period, the rate of interest, and the security pledged, if any, and all makers and endorsers."

SECTION 2.(f) G.S. 163-278.316 reads as rewritten:

"**§ 163-278.316. Limitations on ~~contributions.~~legal expense donations.**

(a) No entity shall make, and no treasurer shall accept, any monetary ~~contribution~~ legal expense donation in excess of fifty dollars ($50.00) unless such ~~contribution~~ legal expense donation is in the form of a check, draft, money order, credit card charge, debit, or other noncash method that can be subject to written verification. No ~~contribution~~ legal expense donation in the form of check, draft, money order, credit card charge, debit, or other noncash method may be made or accepted unless it contains a specific designation of the intended ~~contributee~~ donee chosen by the ~~contributor.~~donor.

(b) The State Board of Elections may adopt rules as to the reporting and verification of any method of ~~contribution~~ legal expense donation payment allowed under this Article. For ~~contributions~~ legal expense donations by money order, the State Board shall adopt rules to ensure an audit trail for every ~~contribution~~ legal expense donation so that the identity of the ~~contributor~~ donor can be determined.

(c) For any ~~contribution~~ legal expense donation made by credit card, the credit card account number of a ~~contributor~~ donor is not a public record.

(d) No legal expense fund shall accept ~~contributions~~ legal expense donations from a corporation, labor union, insurance company, professional association, or business entity in excess of four thousand dollars ($4,000) per calendar year. No legal expense fund shall accept ~~contributions~~ legal expense donations from a corporation which when totaled with ~~contributions~~ legal expense donations to the same legal expense fund for the same calendar year from any affiliated corporation exceed the per calendar year ~~contribution~~ legal expense donation limits for that legal expense fund. No legal expense fund shall accept ~~contributions~~ legal expense donations from a labor union which when totaled with ~~contributions~~ legal expense donations to the same legal expense fund for the same calendar year from any affiliated labor union exceed the per calendar year ~~contribution~~ legal expense donation limits for that legal expense fund. No legal expense fund shall accept ~~contributions~~ legal expense donations from an insurance company which when totaled with ~~contributions~~ legal expense donations to the same legal expense fund for the same calendar year from any affiliated insurance company exceed the per calendar year ~~contribution~~ legal expense donation limits for that legal expense fund. No legal expense fund shall accept ~~contributions~~ legal expense donations from a professional association which when totaled with ~~contributions~~ legal expense donations to the same legal expense fund for the same calendar year from any affiliated

professional association exceed the per calendar year ~~contribution~~ legal expense donation limits for that legal expense fund. No legal expense fund shall accept ~~contributions~~ legal expense donations from a business entity which when totaled with ~~contributions~~legal expense donations to the same legal expense fund for the same calendar year from any affiliated business entity exceed the per calendar year ~~contribution~~ legal expense donation limits for that legal expense fund. The definitions of corporation, labor union, insurance company, professional association, and business entity are the same as those in G.S. 163-278.6. This subsection does not apply to political committees created pursuant to G.S. 163-278.19(b), except that no legal expense fund shall accept a ~~contribution~~ legal expense donation which would be a violation of G.S. 163-278.13B if accepted by a candidate or political committee. This subsection does not apply to corporations permitted to make contributions in G.S. 163-278.19(f).

(e) No entity shall make a ~~contribution~~ legal expense donation to a legal expense fund that the legal expense fund could not accept under subsection (d) of this section."

SECTION 2.(g) G.S. 163-278.320 reads as rewritten:

"**§ 163-278.320. Permitted uses of legal expense funds.**

(a) A legal expense fund may be used for reasonable expenses actually incurred by the elected officer in relation to a legal action or potential legal action brought by or against the elected officer in that elected officer's official capacity. The elected officer's campaign itself shall not be funded from a legal expense fund.

(b) Upon closing a legal expense account, the treasurer shall distribute the remaining monies in the legal expense fund to any of the following:

(1) The Indigent Persons' Attorney Fee Fund under Article 36 of Chapter 7A of the General Statutes.

(2) The North Carolina State Bar for the provision of civil legal services for indigents.

(3) ~~Contributions~~ Payments to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.

(4) To return all or a portion of a ~~contribution~~ legal expense donation to the ~~contributor.~~donor.

(5) Payment to the Escheat Fund established by Chapter 116B of the General Statutes."

SECTION 2.(h) G.S. 163-278.16B(a) reads as rewritten:

"(a) A candidate or candidate campaign committee may use contributions only for the following purposes:

(1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.

(2) Expenditures resulting from holding public office.

(3) Donations to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.

(4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.

(5) Contributions to another candidate or candidate's campaign committee.

(6) To return all or a portion of a contribution to the contributor.

(7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.

(8) Payment to the Escheat Fund established by Chapter 116B of the General Statutes.

(9) Legal expense donation not in excess of four thousand dollars ($4,000) to a legal expense fund established pursuant to Article 22M of Chapter 163 of the General Statutes."

SECTION 3.(a) G.S. 163-278.6(6) reads as rewritten:

"(6) The terms "contribute" or "contribution" mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, ~~promise~~ or other ~~obligation, whether or not legally enforceable,~~ obligation to make a contribution. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a contribution from that person or entity. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or referendum committee. The term "contribution" does not include an "independent expenditure." If:

a. Any individual, person, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any disbursement for any electioneering communication, as defined in G.S. 163-278.80(2) and (3) and G.S. 163-278.90(2) and (3); and

b. That disbursement is coordinated with a candidate, an authorized political committee of that candidate, a State or local political party or committee of that party, or an agent or official of any such candidate, party, or committee

that disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party."

SECTION 3.(b) G.S. 163-278.6(9) reads as rewritten:

"(9) The terms "expend" or "expenditure" mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, ~~promise~~ or other ~~obligation, whether or not legally enforceable,~~ obligation to make an expenditure, to support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a contribution from that person or entity. Supporting or opposing the election

of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term "expenditure" also includes any payment or other transfer made by a candidate, political committee, or referendum committee."

SECTION 4. G.S. 163-278.7(a) reads as rewritten:

"(a) Each candidate, political committee, and referendum committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. Only an individual who resides in North Carolina shall be appointed as a treasurer. A candidate may appoint himself or any other individual, including any relative except his spouse, as his treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided."

SECTION 5. G.S. 163-278.10A reads as rewritten:

"**§ 163-278.10A. Threshold of ~~$3,000~~ $1,000 for ~~Financial Reports.~~financial reports for certain candidates.**

(a) Notwithstanding any other provision of this Chapter, a ~~candidate~~ candidate for a county office, municipal office, local school board office, soil and water conservation district board of supervisors, or sanitary district board shall be exempted from the reports of contributions, loans, and expenditures required in G.S. 163-278.9(a), 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E if to further ~~his~~ the candidate's campaign that candidate:

(1) Does not receive more than ~~three thousand dollars ($3,000)~~one thousand dollars ($1,000) in contributions, and

(2) Does not receive more than ~~three thousand dollars ($3,000)~~one thousand dollars ($1,000) in loans, and

(3) Does not spend more than ~~three thousand dollars ($3,000).~~one thousand dollars ($1,000).

To qualify for the exemption from those reports, the candidate's treasurer shall file a certification that ~~he~~ the candidate does not intend to receive in contributions or loans or expend more than ~~three thousand dollars ($3,000)~~one thousand dollars ($1,000) to further ~~his~~ the candidate's campaign. The certification shall be filed with the Board at the same time the candidate files ~~his~~ the candidate's Organizational Report as required in G.S. 163-278.7, G.S. 163-278.9, and G.S. 163-278.40A. If the candidate's campaign is being conducted by a political committee which is handling all contributions, loans, and expenditures for ~~his~~ the candidate's campaign, the treasurer of the political committee shall file a certification of intent to stay within the threshold amount. If the intent to stay within the threshold changes, or if the ~~three thousand dollar ($3,000)~~one-thousand-dollar ($1,000) threshold is exceeded, the treasurer shall immediately notify the Board and shall be responsible for filing all reports required in G.S. 163-278.9 and 163-278.40B, 163-278.40C, 163-278.40D, and 163-278.40E; provided that any contribution, loan, or expenditure which would have been required to be reported on an earlier report but for this section shall be included on the next report required after the intent changes or the threshold is exceeded.

(b) The exemption from reporting in subsection (a) of this section applies to political party committees under the same terms as for candidates, except that the term "to further ~~his~~ the candidate's campaign" does not relate to a political party committee's exemption, and all contributions, expenditures, and loans during an election shall be counted against the political party committee's threshold amount."

SECTION 6. G.S. 163-278.5 reads as rewritten:

"**§ 163-278.5. Scope of Article; severability.**

The provisions of this Article apply to primaries and elections for North Carolina offices and to North Carolina referenda and do not apply to primaries and elections for federal offices or offices in other States or to non-North Carolina referenda. Any provision in this Article that regulates a non-North Carolina entity does so only to the extent that the entity's actions affect elections for North Carolina offices or North Carolina referenda.

The provisions of this Article are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the Article that can be given effect without the invalid provision.

This section applies to Articles 22B, 22D, 22E, 22F, 22G, 22H, 22J, and 22M of the General Statutes to the same extent that it applies to this Article."

SECTION 7.(a) G.S. 163-278.80(2) reads as rewritten:

"(2) The term "electioneering communication" means any broadcast, cable, or satellite communication that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is ~~made~~ aired within one of the following time periods:

1. 60 days before a general or special election for the office sought by the candidate, or

2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.

c. Is targeted to the relevant electorate."

SECTION 7.(b) G.S. 163-278.80(3) reads as rewritten:

"(3) The term "electioneering communication" does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless those facilities are owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

e. A communication that meets all of the following criteria:

1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.

2. Does not take a position on the candidate's character or qualifications and fitness for office.

3. Proposes a commercial transaction."

SECTION 7.(c) Article 22E of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163.278.84. Determination of electioneering communication.**

(a) Any individual, committee, association, or any other organization or group of individuals that produces a communication to be aired to the relevant electorate in the time

periods under G.S. 163-278.80(2)b. may, but is not required to, ask the State Board for a determination as to whether or not that communication is an electioneering communication prior to the airing of that communication.

(b) The State Board shall establish a process for determination as to whether a communication is an electioneering communication prior to the airing of that communication when it requested under subsection (a) of this section. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall include an opportunity for immediate appeal to the State Board of the determination by the Executive Director."

SECTION 8.(a) G.S. 163-278.90(2) reads as rewritten:

"(2) The term "electioneering communication" means any mass mailing or telephone bank that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is ~~made~~ transmitted within one of the following time periods:

1. 60 days before a general or special an election for the office sought by the candidate, or

2. 30 days before a primary election or a convention of a political party that has authority to nominate a candidate for the office sought by the candidate.

c. Is targeted to the relevant electorate."

SECTION 8.(b) G.S. 163-278.90(3) reads as rewritten:

"(3) The term "electioneering communication" does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication that is distributed by a corporation solely to its shareholders or employees, or by a labor union or professional association solely to its members.

e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

f. A communication that meets all of the following criteria:

1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.

2. Does not take a position on the candidate's character or qualifications and fitness for office.

3. Proposes a commercial transaction."

SECTION 8.(c) Article 22F of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163.278.94. Determination of electioneering communication.**

(a) Any individual, committee, association, or any other organization or group of individuals that produces a communication to be distributed to the relevant electorate in the time periods under G.S. 163-278.90(2)b. may, but is not required to, ask the State Board for a determination as to whether or not that communication is an electioneering communication prior to the airing of that communication.

(b) The State Board shall establish a process for determination as to whether a communication is an electioneering communication prior to the airing of that communication when it is requested under subsection (a) of this section. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall include an opportunity for immediate appeal to the State Board of the determination by the Executive Director."

SECTION 9.(a) G.S. 163-278.100(1) reads as rewritten:

"(1) The term "candidate-specific communication" means any broadcast, cable, or satellite communication that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is ~~made~~ aired in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to G.S. 163-106(c) or G.S. 163-323, and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.80(2)b.

c. Is targeted to the relevant electorate."

SECTION 9.(b) G.S. 163-278.100(2) reads as rewritten:

"(2) The term "candidate-specific communication" does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless those facilities are owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

e. An electioneering communication as defined in Article 22E of this Chapter.

f. A communication that meets all of the following criteria:

1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.

2. Does not take a position on the candidate's character or qualifications and fitness for office.

3. Proposes a commercial transaction."

SECTION 9.(c) Article 22G of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163.278.103. Determination of candidate-specific communication.

(a) Any individual, committee, association, or any other organization or group of individuals that produces a communication to be aired to the relevant electorate in the time periods under G.S. 163-278.100(1)b. may, but is not required to, ask the State Board for a determination as to whether or not that communication is a candidate-specific communication prior to the airing of that communication.

(b) The State Board shall establish a process for determination as to whether a communication is a candidate-specific communication prior to the airing of that communication when it is requested under subsection (a) of this section. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall include an opportunity for immediate appeal to the State Board of the determination by the Executive Director."

SECTION 10.(a) G.S. 163-278.110(1) reads as rewritten:

"(1) The term "candidate-specific communication" means any mass mailing or telephone bank that has all the following characteristics:

a. Refers to a clearly identified candidate for a statewide office or the General Assembly.

b. Is ~~made~~ transmitted in an even-numbered year after the final date on which a Notice of Candidacy can be filed for the office, pursuant to G.S. 163-106(c) or G.S. 163-323, and through the day on which the general election is conducted, excluding the time period set in the definition for "electioneering communication" in G.S. 163-278.90(2)b.

c. Is targeted to the relevant electorate."

SECTION 10.(b) G.S. 163-278.110(2) reads as rewritten:

"(2) The term "candidate-specific communication" does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through any newspaper or periodical, unless that publication is owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under Article 22A of this Chapter.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication that is distributed by a corporation solely to its shareholders or employees or by a labor union or professional association solely to its members.

e. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation.

f. An electioneering communication as defined in Article 22F of this Chapter.

g. A public opinion poll conducted by a newspaper, periodical, or other news gathering organization.

h. A communication that meets all of the following criteria:

1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.
2. Does not take a position on the candidate's character or qualifications and fitness for office.
3. Proposes a commercial transaction."

SECTION 10.(c) Article 22H of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163.278.113. Determination of candidate-specific communication.**

(a) Any individual, committee, association, or any other organization or group of individuals that produces a communication to be distributed to the relevant electorate in the time periods under G.S. 163-278.110(1)b. may, but is not required to, ask the State Board for a determination as to whether or not that communication is a candidate-specific communication prior to the airing of that communication.

(b) The State Board shall establish a process for determination as to whether a communication is a candidate-specific communication prior to the airing of that communication when it is requested under subsection (a) of this section. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall include an opportunity for immediate appeal to the State Board of the determination by the Executive Director."

SECTION 11. This act becomes effective December 1, 2009.

HOUSE BILL 1111:
Campaign Finance Amendments

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	August 4, 2009
Introduced by:	Rep. Goodwin	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to Third Edition H1111-CSST-75		Committee Counsel

SUMMARY: ***The proposed committee substitute would make various changes to the campaign finance laws.***

CURRENT LAW & BILL ANALYSIS:

Section 1. **[House Bill 1111, Representative Goodwin]** Currently, the campaign finance statutes do not explicitly address the record-keeping and reporting requirements for individuals who are testing the waters of a candidacy. ***The proposed committee substitute would amend the definition of "candidate" to add language that an individual becomes a candidate for campaign finance purposes when positive action is taken to bring about the individual's nomination or election, including making a public announcement of a definite intent to run.***

Section 2. **[House Bill 1111, Representative Goodwin]** Currently, Article 22M uses the term "contribution" to refer to donations given for legal expense funds, and defines that term as it is defined in G.S. 163-278.6 for campaign finance purposes. Legal expense funds may be used for the limited purpose of expenses incurred in relation to an actual or potential legal action brought by or against an elected official in their official capacity. The State Board of Election raised concerns that the terminology used in Article 22M did not accurately reflect its purpose. ***The proposed committee substitute eliminates the use of the term "contribution" in Article 22M and replaces it with the term "legal expense donation". It would define the term "legal expense donation" as donations by various means to a legal expense fund for uses specifically permitted under that Article. It would define "expenditure" as expenditures by various means from a legal expense fund for uses specifically permitted under that Article. The proposed committee substitute also provides in G.S. 163-278.16B that a candidate or candidate campaign committee may use contributions for a legal expense donation not in excess of $4,000 to a legal expense fund.***

Section 3. **[House Bill 1111, Representative Goodwin]** Currently, the definitions of "contribution" and "expenditure" in Article 22A, the main campaign finance act, include the term "promise ... whether or not legally enforceable . . ." ***The proposed committee substitute rewrites the definitions to remove "promise" from "contribution" and "whether or not legally enforceable" from "contribution" and "expenditure." It provides that an expenditure forgiven by the person or entity to whom it is owed shall be reported as a contribution from that person or entity.***

Section 4. **[House Bill 1111, Representative Goodwin]** Currently, there is no residency requirement for treasurers of candidate, political or referendum committees. The State Board raised concerns over the ability to subpoena out-of-state treasurers. ***The proposed committee substitute would require that treasurers must be North Carolina residents.***

Section 5. **[House Bill 388, Representative Earle]** G.S. 163-278.10A exempts candidates who fall below a $3,000 threshold in receipt of contributions, loans and spending, respectively, from filing certain required reports of contributions, loans and expenditures. To qualify for the exemption, a candidate's treasurer must file a certification that the candidate does not intend to either receive in

contributions or loans or expend more than $3,000 to further the candidate's campaign. The certification is included with the candidate's Organizational Report. If a candidate's campaign is conducted by a political committee handling all contributions, loans, and expenditures, the political committee treasurer must file a certification of intent to stay within the $3,000 threshold.

If the intent to stay within the threshold changes, or if the $3,000 threshold is exceeded, the treasurer must immediately notify the Board and file all required reports. Any contribution, loan or expenditure which would have been required on an earlier report must be included on the next report required after the intent changes or threshold is exceeded.

The exemption for campaigns below the $3,000 threshold also applies to political party committees, but all contributions, expenditures, and loans during an election must be counted against the political party committee's threshold amount.

The proposed committee substitute amends G.S. 163-278.10A by lowering the threshold for receiving and expending by a campaign from $3,000 to $1,000 to qualify for the exemption from filing certain required campaign finance reports. The exemption would be limited to candidates for municipal office, county office, local school board offices, soil and water conservation district board of supervisors, and sanitary district boards. This change would result in all other campaigns receiving or expending funds having to file all the required campaign finance reports.

Section 6. **[Senate Bill 716, Senator Clodfelter]** G.S. 163-278.5 provides that the campaign finance laws apply to primaries and elections for North Carolina offices and to North Carolina referenda. It specifically states that the campaign finance laws do not apply to primaries and elections for federal offices, offices in other States, or to non-North Carolina referenda. The provisions in the campaign finance law that regulate non-North Carolina entities do so only to the extent that the entity's actions affect elections for North Carolina offices or North Carolina referenda. The provisions of the campaign finance law are severable, meaning if any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the campaign finance law that can be given effect without the invalid provision. Currently, the same language applies to these other Articles in Chapter 163, Election Law: Article 22B -- Appropriations from the North Carolina Political Parties Financing Fund; Article 22D -- The North Carolina Public Campaign Fund; Article 22E -- Electioneering Communications; Article 22F -- Mass Mailings and Telephone Banks: Electioneering Communications; Article 22G -- Candidate-Specific Communications; Article 22H -- Mass Mailings and Telephone Banks: Candidate-Specific Communications; and Article 22M -- Legal Expense Funds. ***The proposed committee substitute applies the same general applicability language in G.S. 163-278.5 to Article 22J, The Voter-Owned Elections Act. Article 22J governs public financing for three Council of State races: Auditor, Superintendent of Public Instruction, and Commissioner of Insurance.***

Sections 7, 8, 9, 10. **[House Bill 1048, Representative Faison]**

Electioneering Communications. Currently, Articles 22E and 22F of G.S. Chapter 163 regulate "electioneering communications." They are communications on radio, TV, mass mail, or phone bank that do all of the following:

- Refer to a clearly identified candidate for statewide or legislative office.
- Are made during the period 60 days before a general election or 30 days before a primary.
- Are "targeted to the relevant electorate" (defined term that sets thresholds for the number of potential voters in the candidate's election who could be reached by the communication).

This is designed to regulate communications that are not reached by the Campaign Finance Law, Article 22A, which provides a full range of reporting, prohibitions, and contribution limits. Article 22A applies only to communications that reach the level of "express advocacy" of the election or defeat of a candidate, which has come to mean the use of certain "magic words" such as "Vote for," "Vote against," etc. The electioneering communication statutes apply only to communications that fall outside the "magic words" but are nonetheless the "functional equivalent of express advocacy."

The regulation the electioneering communication statutes impose is a form of disclosure and a prohibition on the use of corporate, professional association, insurance company, or labor union money. Those prohibited sources cannot be banned from an electioneering communication unless it is "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." That language comes from the U.S. Supreme Court decision of *Wisconsin Right to Life v. FEC*, which limited the enforcement of the equivalent prohibited source ban in the federal McCain-Feingold statute. It was added in 2008 as a limitation to NC law.

Candidate-Specific Communications. Articles 22G and 22H of Chapter 163 regulate "candidate-specific communications." They are defined the same as electioneering communications, except that they are made during a different time period. They are made outside the 30-day and 60-day pre-voting windows, but between the candidate filing period and general election day. Disclosure is required for candidate-specific communications, but there is no source prohibition.

There are several specific exemptions from the definitions of both electioneering communications and candidate-specific communications.

The proposed committee substitute would exempt from the definitions of both electioneering communications and candidate-specific communications a communication that meets all of the following criteria:

1. ***It does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.***
2. ***It does not take a position on any candidate's or officeholder's character or qualifications and fitness for office.***
3. ***Proposes a commercial transaction.***

Exemption from the definition means that neither reporting nor the funding source prohibition would apply to that communication.

The two definition exceptions appear in Sections 7 through 10 of the bill, changing all four of the relevant Articles.

The proposed committee substitute also:

1. ***Amends the definitions in all four Articles, changing the term "made" (as in "a communication is made") to "aired" or "transmitted." The term "made" was patterned after the language in McCain-Feingold.***
2. ***Requires the State Board of Elections to develop a process to determine whether or not a communication is an electioneering or candidate-specific communication prior to its airing upon the request of the individual or group preparing the communication. The process must include the ability to immediately appeal the decision, if the decision making authority is delegated to the Executive Director.***

EFFECTIVE DATE: December 1, 2009.

H1111-SMST-73(CSST-75) v4

Bill Gilkeson, Kara McCraw and Denise Huntley contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1111 DATE _____

S. B. No. _____ Amendment No. _____

COMMITTEE SUBSTITUTE _____ (to be filled in by Principal Clerk)

Rep.)
Sen.) Brunstetter

1 moves to amend the bill on page 7, line 3
2 ( ) WHICH CHANGES THE TITLE
3 by inserting "per calendar year" after "($4,000)".
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 4

HOUSE BILL 1329

Committee Substitute Favorable 4/29/09
Committee Substitute #2 Favorable 5/11/09
Senate Judiciary I Committee Substitute Adopted 6/30/09

Short Title: Consolidate Expunction Statutes. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE ALL STATUTES RELATED TO EXPUNCTION OF RECORDS IN ONE ARTICLE OF THE GENERAL STATUTES, TO MODIFY THE AGE REQUIREMENTS OF CERTAIN EXPUNCTIONS TO BE THE AGE AT THE TIME OF THE OFFENSE RATHER THAN THE AGE AT THE TIME OF CONVICTION, TO ALLOW THE EXPUNCTION OF MISDEMEANOR LARCENY, AND TO MAKE CLARIFYING AND CONFORMING CHANGES TO THE EXPUNCTION STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.**

(a) Whenever any person who has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, or has been discharged and had the proceedings against the person dismissed pursuant to G.S. 14-50.29, and the offense was committed before the person attained the age of 18 years, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.

(3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the offense in question or during the two-year period following that conviction, whichever applies.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

(b) If the court, after hearing, finds that (i) the petitioner was dismissed and the proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner had not attained the age of 18 years at the time of the offense in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment or information, or trial, or response to any inquiry made of the person for any purpose. The court shall also order that the said conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction as the result of a criminal charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief of police, or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(c) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina."

SECTION 2. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.**

(a) Whenever a person is discharged, and the proceedings against the person dismissed, pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the offense, the person may apply to the court for an order to expunge from all official records

(other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-96(c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation following the decision to defer further proceedings on the offense in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him dismissed and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff, chief of police, or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing, that such person was not over 21 years of age at the time the offense for which the person was charged occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or

acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(c) Whenever any person who has not previously been convicted of an offense under Article 5 of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-96(c)) all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as

appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been canceled and expunged under the provisions of this subsection, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been canceled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 of Chapter 90 of the General Statutes has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this subsection.

(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 3. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.**

(a) Whenever a person is discharged and the proceedings against the person dismissed under G.S. 90-113.14(a) or (a1), such person, if he was not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-113.14(c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;

(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him dismissed and that he was not over 21 years of age at the time of the offense, it

shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff, chief of police, or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(b) Whenever any person is charged with a misdemeanor under Article 5A of Chapter 90 of the General Statutes or possessing drug paraphernalia as prohibited by G.S. 90-113.22, upon dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time the offense for which the person was charged occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

(c) Whenever any person who has not previously been convicted of an offense under Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-113.14(c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by G.S. 90-113.22, that he was not over 21 years of age at the time of the offense, that he has been

of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this subsection, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5A of Chapter 90 of the General Statutes has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this subsection."

SECTION 4. G.S. 14-50.29 reads as rewritten:

"**§ 14-50.29. Conditional discharge for first offenders under the age of 18.**

(a) Whenever any person who ~~has not yet attained the age of 18 years, and~~ has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state, pleads guilty to or is guilty of (i) a Class H felony under this Article or (ii) an enhanced offense under G.S. 14-50.22, and the offense was committed before the person attained the age of 18 years, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation upon such reasonable terms and conditions as the court may require.

(b) If the court, in its discretion, defers proceedings pursuant to this section, it shall place the defendant on supervised probation for not less than one year, in addition to any other conditions. Prior to taking any action to discharge and dismiss under this section, the court shall make a finding that the defendant has no previous criminal convictions. Upon fulfillment of the terms and conditions of the probation provided for in this section, the court shall discharge the defendant and dismiss the proceedings against the defendant.

(c) Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and

dismissal under this section may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Upon violation of a term or condition of the probation provided for in this section, the court may enter an adjudication of guilt and proceed as otherwise provided.

(d) Upon discharge and dismissal pursuant to this section, the person may apply for an order to expunge the complete record of the proceedings resulting in the dismissal and discharge, pursuant to the procedures and requirements set forth in ~~G.S. 14-50.30(a).~~G.S. 15A-145.1. ~~If the court determines, after hearing, that such person was dismissed and the proceedings against the person discharged and that the person had not yet attained 18 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status the person occupied before such arrest or indictment or information.~~

(e) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge."

SECTION 5. G.S. 14-50.30 reads as rewritten:

"**§ 14-50.30. Expunction of records.**

~~(a) Whenever any~~ Any person who ~~has not yet attained the age of 18 years and~~ has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state, may, if the offense was committed before the person attained the age of 18 years, be eligible to apply for expunction of certain offenses under this Article pursuant to G.S. 15A-145.1.~~pleads guilty to or is guilty of (i) a Class H felony under this Article or (ii) an enhanced offense under G.S. 14-50.22, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:~~

~~(1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.~~

~~(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.~~

~~(3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.~~

~~(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the~~

~~petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the offense in question or during the two-year period following that conviction, whichever applies.~~

~~(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.~~

~~The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.~~

~~(b) If the court, after hearing, finds that the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner had not attained the age of 18 years at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of the person for any purpose. The court shall also order that the said conviction be expunged from the records of the court, and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction as the result of a criminal charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief, or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.~~

~~(c) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.~~"

SECTION 6. G.S. 90-96 reads as rewritten:

"**§ 90-96. Conditional discharge ~~and expunction of records~~ for first offense.**

(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or is found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article or by possessing drug paraphernalia as prohibited by ~~G.S. 90-113.21,~~G.S. 90-113.22, or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the

Department of Health and Human Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under this Article. Discharge and dismissal under this section or G.S. 90-113.14 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Controlled Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-95(a)(3) or ~~G.S. 90-113.21~~G.S. 90-113.22 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Health and Human Services pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

(1) There is no drug education school within a reasonable distance of the defendant's residence; or

(2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subdivision (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

Upon fulfillment of the terms and conditions of the probation, the court shall discharge such person and dismiss the proceedings against the person.

For the purposes of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or ~~90-113.21~~90-113.22 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation pursuant to this subsection and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section.~~G.S. 15A-145.2. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the ~~course,~~course as provided in G.S. 90-96.01(b), or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke ~~probation and/or~~ probation, shall not discharge such person, shall not dismiss the

proceedings against the person, and shall deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section.~~G.S. 15A-145.2. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the ~~dismissal~~ discharge of such person, and ~~discharge~~ dismissal of the proceedings against him under subsection (a) or (a1) of this section, such person, if he were not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(a).~~may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:~~

~~(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;~~

~~(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;~~

~~(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation following the decision to defer further proceedings on the offense in question.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.~~

~~If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.~~

~~The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to Judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article or a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(b).~~such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.~~

(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by ~~G.S. 90-113.21,~~G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.2(c).~~the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been canceled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.~~

~~The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to the petitioner's arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited in G.S. 90-113.21, or (ii) a felony under G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years~~

~~of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.~~

~~The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been canceled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been canceled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article.~~

~~(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent.~~"

SECTION 7. G.S. 90-113.14 reads as rewritten:

"**§ 90-113.14. Conditional discharge ~~and expunction of records~~ for first offenses.**

(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A or 5B of Chapter 90 pleads guilty to or is found guilty of inhaling or possessing any substance having the property of releasing toxic vapors or fumes in violation of Article 5A of Chapter 90, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under

this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions. Discharge and dismissal under this section or G.S. 90-96 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge or dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, the "North Carolina Controlled Substances Act", Article 5, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-113.10 or 90-113.11 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Health and Human Services pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

(1) There is no drug education school within a reasonable distance of the defendant's residence; or

(2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subsection (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

Upon fulfillment of the terms and conditions of the probation, the court shall discharge such person and dismiss the proceedings against the person.

For the purpose of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or ~~90-113.21~~90-113.22 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation pursuant to this subsection and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section.~~G.S. 15A-145.3. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the ~~course,~~course as provided in G.S. 90-96.01(b), or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke ~~probation and/or~~probation, shall not discharge such person, shall not dismiss the proceedings against the person, and shall deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section.~~G.S. 15A-145.3. A person may obtain a hearing before the

court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) or (a1) of this section, such person, if he were not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(a). ~~may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:~~

~~(1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;~~

~~(2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;~~

~~(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.~~

~~If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.~~

~~The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Commission, the names of all persons convicted under such Articles, together with the offense or offenses of which such

persons were convicted. The clerk shall also file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Court shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 or 5A has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article ~~by possessing a controlled substance included within Schedules II through VI of this Article, or by~~ or possessing drug paraphernalia as prohibited by ~~G.S. 90-113.21~~G.S. 90-113.22 upon dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(b).~~such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment, or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment, or information, or trial in response to any inquiry made of him for any purpose.~~

(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of ~~this Article~~Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under this ~~Article by possessing a controlled substance included within Schedules II through VI of this~~ Article, the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.3(c).~~the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.~~

~~The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.~~

~~The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or~~

~~since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.~~

~~The court shall also order that all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article.~~"

SECTION 8. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement under this section, G.S. 15A-145, ~~or G.S. 90-96,~~G.S. 15A-145.1, 15A-145.2, or 15A-145.3, and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

SECTION 9. G.S. 15A-146(a1) reads as rewritten:

"(a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple offenses and all the charges are dismissed, or findings of not guilty or not responsible are made, then a person may apply to have each of those charges expunged if the offenses occurred within the same 12-month period of time or if the charges are dismissed or findings are made at the same term of court. Unless circumstances otherwise clearly provide, the phrase "term of court" shall mean one week for superior court and one day for district court. There is no requirement that the multiple offenses arise out of the same transaction or occurrence or that the multiple offenses were consolidated for judgment. The court shall hold a hearing on the application. If the court finds that the person had not previously received an expungement under this

subsection, that the person had not previously received an expungement under ~~G.S. 15A-145 or G.S. 90-96,~~G.S. 15A-145, 15A-145.1, 15A-145.2, or 15A-145.3, and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

SECTION 10. G.S. 15A-145 reads as rewritten:

"§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.

(a) Whenever any person who ~~has (i) not yet attained the age of 18 years and~~ has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic violation, and the offense was committed before the person attained the age of 18 years, or ~~(ii) not yet attained the age of 21 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state,~~(ii) pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), and the offense was committed before the person attained the age of 21 years, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and (i) petitioner was not 18 years old at the time of the ~~conviction~~ offense in question, or (ii) petitioner was not 21 years old at the time of the ~~conviction~~ offense of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

(c) The court shall also order that the said misdemeanor conviction, or a civil revocation of a drivers license as the result of a criminal charge, be expunged from the records of the court, and direct all law-enforcement agencies, including the Division of Motor Vehicles, bearing record of the same to expunge their records of the conviction or a civil revocation of a drivers license as the result of a criminal charge. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(d1) Notwithstanding subsection (a) of this section and any other provision of law, a person may file a petition in the court where the person was convicted for expunction of a misdemeanor conviction from the person's criminal record if the person was convicted for misdemeanor larceny under G.S. 14-72(a) more than 10 years prior to the filing of the petition using the procedure set forth in this section.

(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred twenty-five dollars ($125.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 11. This act becomes effective December 1, 2009, and applies to petitions for expunctions filed on or after that date.

PENDING - DO NO.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1329

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

H1329-ASA-33 [v.1]

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

Date 7-9-09 ,2009

Senator Soles

moves to amend the bill on page 19, lines 38-39
by rewriting those lines to read:
"misdemeanor larceny pursuant to G.S.14-72(a) more than ten years prior to the filing of the petition.

The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the ten-year period preceding the filing of the petition, and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state during the ten-year period.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State during the ten-year period preceding the filing of the petition.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the ten-year period that he deems desirable.

If the court, after hearing finds that the petitioner had remained of good behavior and been free on conviction of any felony or misdemeanor, other than a traffic violation, during the ten-

NORTH CAROLINA GENERAL ASSEMBLY [redacted]
AMENDMENT
House Bill 1329

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

H1329-ASA-33 [v.1]

year period preceding the petition, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and petitioner was convicted of misdemeanor larceny pursuant to G.S. 14-72(a) more than ten years prior to the filing of the petition, it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

The provisions of subsections (c), (d), and (e) of this section shall apply to a petition for expunction filed or granted pursuant to this subsection."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

PENDING - DO NOT REMOVE

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1260
PROPOSED SENATE COMMITTEE SUBSTITUTE H1260-CSLH-31 [v.3]

8/4/2009 2:43:10 PM

Short Title: Conform State Law/Firearm Disentitlement. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CONFORM STATE LAW WITH FEDERAL LAW REGARDING DISENTITLEMENT TO PURCHASE, OWN, POSSESS, OR CONTROL A FIREARM AFTER THE FELONY CONVICTION OF CERTAIN WHITE COLLAR CRIMINAL OFFENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-415.1 is amended by adding a new subsection to read:

"(d) This section does not apply and there is no disentitlement under this section if the felony conviction is a violation under the laws of North Carolina, another state, or the United States that pertains to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices."

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 1260:
Conform State Law/Firearm Disentitlement

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	August 4, 2009
Introduced by:	Reps. Bryant, Cotham, Burr, Burris-Floyd	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	PCS to First Edition H1260-CSLH-31		

SUMMARY: ***The Proposed Committee Substitute for House Bill 1260 would conform state law with federal law regarding disentitlement to purchase, own, possess, or control a firearm after the felony conviction of certain white collar criminal offenses.***

BILL ANALYSIS: The PCS for H1260 would provide that the NC Felony Firearms Act does not apply and there is no disentitlement if a person is convicted of a felony pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices.

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.

H1260-SMSA-132(CSLH-31) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 2

HOUSE BILL 1312
Committee Substitute Favorable 5/11/09

Short Title: Omnibus Highway/MV Statute Changes. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE APPLICABILITY OF THE LAW REQUIRING DRIVERS TO PULL OVER AND STOP WHEN APPROACHED BY A FIRE OR RESCUE VEHICLE, TO CLARIFY THAT PUBLIC SERVICE VEHICLES ARE COVERED UNDER THE MOVE OVER LAW, TO MODIFY THE CURRENT PROHIBITION ON PARKING ON HIGHWAYS OR HIGHWAY SHOULDERS, TO CHANGE THE TIME PERIOD IN WHICH THE DIVISION OF MOTOR VEHICLES MUST HOLD AN ADMINISTRATIVE HEARING FOR A VIOLATION OF THE MOTOR VEHICLE INSPECTION PROGRAM STATUTES BY AN EMISSIONS INSPECTION STATION LICENSE HOLDER, TO CLARIFY RESTRICTIONS ON OPERATING A SCHOOL BUS OR ACTIVITY BUS WHILE OCCUPIED BY A CHILD OR CHILDREN, TO EXEMPT DISTRIBUTIONS OF PROCEEDS DERIVED FROM GARVEE BONDS FROM THE STATE EQUITY DISTRIBUTION FORMULA FOR TRANSPORTATION FUNDS, AND TO SPECIFY THAT THE YELLOW LIGHT DURATION INTERVAL FOR A TRAFFIC CONTROL PHOTOGRAPHIC SYSTEM BE SPECIFIED IN A TRAFFIC SIGNAL PLAN SIGNED AND SEALED BY A PROFESSIONAL ENGINEER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-157(a) reads as rewritten:

"(a) Upon the approach of any law enforcement or fire department vehicle or public or private ambulance or rescue squad emergency service vehicle giving warning signal by appropriate light and by audible bell, siren or exhaust whistle, audible under normal conditions from a distance not less than 1000 feet, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb, clear of any intersection of streets or highways, and shall stop and remain in such position unless otherwise directed by a law enforcement or traffic officer until law enforcement or fire department vehicle or public or private ambulance or rescue squad emergency service vehicle shall have passed. Provided, however, this subsection shall not apply to vehicles traveling in the opposite direction of the vehicles herein enumerated when traveling on a ~~four-lane limited access~~ highway with a median divider dividing the highway for vehicles traveling in opposite directions, and provided further that the violation of this subsection shall be negligence per se. Violation of this subsection is a Class 2 misdemeanor."

SECTION 2. G.S. 20-157(f) reads as rewritten:

"(f) When an authorized emergency vehicle as described in subsection (a) of this section or any public service vehicle is parked or standing within 12 feet of a roadway and is giving a warning signal by appropriate light, the driver of every other approaching vehicle shall, as soon

as it is safe and when not otherwise directed by an individual lawfully directing traffic, do one of the following:

(1) Move the vehicle into a lane that is not the lane nearest the parked or standing authorized emergency vehicle or public service vehicle and continue traveling in that lane until safely clear of the authorized emergency ~~vehicle.~~vehicle or public service vehicle. This paragraph applies only if the roadway has at least two lanes for traffic proceeding in the direction of the approaching vehicle and if the approaching vehicle may change lanes safely and without interfering with any vehicular traffic.

(2) Slow the vehicle, maintaining a safe speed for traffic conditions, and operate the vehicle at a reduced speed and be prepared to stop until completely past the authorized emergency vehicle or public service vehicle. This paragraph applies only if the roadway has only one lane for traffic proceeding in the direction of the approaching vehicle or if the approaching vehicle may not change lanes safely and without interfering with any vehicular traffic.

For purposes of this section, "public service vehicle" means a vehicle that is being used to assist motorists or law enforcement officers with wrecked or disabled vehicles, and is operating an amber-colored flashing light authorized by G.S. 20-130.2. Violation of this subsection shall be negligence per se."

SECTION 3. G.S. 20-161(a) reads as rewritten:

"(a) No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled portion of any highway or highway bridge ~~outside municipal corporate limits~~on the State highway system unless the vehicle is disabled to such an extent that it is impossible to avoid stopping and temporarily leaving the vehicle upon the paved or main traveled portion of the highway or highway bridge."

SECTION 4. G.S. 20-161(b) reads as rewritten:

"(b) No person shall park or leave standing any vehicle upon the shoulder of a public highway ~~outside municipal corporate limits~~on the State highway system unless the vehicle can be clearly seen by approaching drivers from a distance of 200 feet in both directions and does not obstruct the normal movement of traffic."

SECTION 5. G.S. 20-183.8G(b) reads as rewritten:

"(b) Hearing After Statement of Charges. – When a license holder receives a statement of charges of a violation that could result in the suspension or revocation of the person's license, the person can obtain a hearing by making a request for a hearing. The person must make the request to the Division within 10 days after receiving the statement of the charges. A person who does not request a hearing within this time limit waives the right to a hearing.

The Division must hold a hearing requested under this subsection within ~~three business~~15 business days after receiving the ~~request unless the person requesting the hearing asks for additional time to prepare for the hearing.~~request. ~~A person may ask for no more than seven additional business days to prepare. If the additional time requested is within this limit, the Division must grant a person the additional time requested.~~ The hearing must be held at the location designated by the Division. Suspension or revocation of the license is stayed until a decision is made following the hearing.

If a person does not request a hearing within the time allowed for making the request, the proposed suspension or revocation becomes effective the day after the time for making the request ends. If a person requests a hearing but does not attend the hearing, the proposed suspension or revocation becomes effective the day after the date set for the hearing."

SECTION 6. G.S. 20-218 reads as rewritten:

"**§ 20-218. Standard qualifications for school bus drivers; speed limit for school buses and school activity buses.**

(a) Qualifications. – No person shall drive a school bus over the highways or public vehicular areas of North Carolina while it is occupied by ~~children~~ one or more child passengers unless the person furnishes to the superintendent of the schools of the county in which the bus shall be operated a certificate from any representative duly designated by the Commissioner and from the Director of Transportation or a designee of the Director in charge of school buses in the county showing that the person has been examined by them and is fit and competent to drive a school bus over the highways and public vehicular areas of the State. The driver of a school bus must be at least 18 years of age and hold a Class A, B, or C commercial drivers license and a school bus driver's certificate. The driver of a school activity bus must meet the same qualifications as a school bus driver or must have a license appropriate for the class of vehicle being driven.

(b) Speed Limits. – It is unlawful to drive a school bus ~~loaded with children~~ occupied by one or more child passengers over the highways or public vehicular areas of the State at a greater rate of speed than 45 miles per hour. It is unlawful to drive a school activity bus ~~loaded with children~~ loaded with one or more child passengers over the highways or public vehicular areas of North Carolina at a greater rate of speed than 55 miles per hour.

(c) Punishment. – A person who violates this section commits a Class 3 misdemeanor."

SECTION 7. G.S. 136-17.2A(i) is repealed.

SECTION 8. G.S. 160A-300.1(c1) reads as rewritten:

"(c1) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified ~~in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~ on the traffic signal plan of record signed and sealed by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes, and shall comply with the provisions of the Manual on Uniform Traffic Control Devices."

SECTION 9. G.S. 160A-300.2(e), as enacted by Section 3 of S.L. 2001-286, reads as rewritten:

"(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified ~~in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~ on the traffic signal plan of record signed and sealed by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes, and shall comply with the provisions of the Manual on Uniform Traffic Control Devices."

SECTION 10. G.S. 160A-300.3(e), as enacted by Section 4 of S.L. 2001-286, reads as rewritten:

"(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified ~~in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~ on the traffic signal plan of record signed and sealed by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes, and shall comply with the provisions of the Manual on Uniform Traffic Control Devices."

SECTION 11. G.S. 160A-303(b1)(4) reads as rewritten:

"(4) Is left on any public street or highway for longer than seven ~~days.~~ days or is determined by law enforcement to be a hazard to the motoring public."

SECTION 12. Sections 1, 2, 3, 4, and 6 of this act become effective December 1, 2009, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1312
Committee Substitute Favorable 5/11/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H1312-CSRW-47 [v.4]

8/3/2009 8:33:57 PM

Short Title: Omnibus Highway/MV Statute Changes. (Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE APPLICABILITY OF THE LAW REQUIRING DRIVERS TO PULL OVER AND STOP WHEN APPROACHED BY A FIRE OR RESCUE VEHICLE, TO PROVIDE THAT PUBLIC SERVICE VEHICLES AND RURAL LETTER CARRIER VEHICLES ARE COVERED UNDER THE MOVE OVER LAW, TO MODIFY THE CURRENT PROHIBITION ON PARKING ON HIGHWAYS OR HIGHWAY SHOULDERS, TO CHANGE THE TIME PERIOD IN WHICH THE DIVISION OF MOTOR VEHICLES MUST HOLD AN ADMINISTRATIVE HEARING FOR A VIOLATION OF THE MOTOR VEHICLE INSPECTION PROGRAM STATUTES BY AN EMISSIONS INSPECTION STATION LICENSE HOLDER, TO CLARIFY RESTRICTIONS ON OPERATING A SCHOOL BUS OR ACTIVITY BUS WHILE OCCUPIED BY A CHILD OR CHILDREN, TO EXEMPT FUNDS RECEIVED FROM THE APPALACHIAN REGIONAL COMMISSION FOR THE APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM ROADS FROM THE STATE EQUITY DISTRIBUTION FORMULA FOR TRANSPORTATION FUNDS, TO CLARIFY THAT FUNDS USED IN REPAYMENT OF GARVEE BONDS ARE SUBJECT TO THE STATE EQUITY DISTRIBUTION FORMULA FOR TRANSPORTATION FUNDS, TO REQUIRE THE DEPARTMENT OF TRANSPORTATION TO USE ALL FUNDS RECEIVED FROM THE APPALACHIAN REGIONAL COMMISSION FOR THE APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM TO COMPLETE CONSTRUCTION OF THE APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM ROADS; AND TO SPECIFY THAT THE YELLOW LIGHT DURATION INTERVAL FOR A TRAFFIC CONTROL PHOTOGRAPHIC SYSTEM BE SPECIFIED IN A TRAFFIC SIGNAL PLAN SIGNED AND SEALED BY A PROFESSIONAL ENGINEER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-157(a) reads as rewritten:

"(a) Upon the approach of any law enforcement or fire department vehicle or public or private ambulance or rescue squad emergency service vehicle giving warning signal by appropriate light and by audible bell, siren or exhaust whistle, audible under normal conditions from a distance not less than 1000 feet, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb, clear of any intersection of streets or highways, and shall stop and remain in such position unless

otherwise directed by a law enforcement or traffic officer until law enforcement or fire department vehicle or public or private ambulance or rescue squad emergency service vehicle shall have passed. Provided, however, this subsection shall not apply to vehicles traveling in the opposite direction of the vehicles herein enumerated when traveling on a ~~four-lane limited access~~ highway with a median divider dividing the highway for vehicles traveling in opposite directions, and provided further that the violation of this subsection shall be negligence per se. Violation of this subsection is a Class 2 misdemeanor."

SECTION 2. G.S. 20-157(f) reads as rewritten:

"(f) When an authorized emergency vehicle as described in subsection (a) of this section or any public service vehicle is parked or standing within 12 feet of a roadway and is giving a warning signal by appropriate light, or when any vehicle clearly marked as a rural letter carrier vehicle is parked or standing within 12 feet of a roadway, the driver of every other approaching vehicle shall, as soon as it is safe and when not otherwise directed by an individual lawfully directing traffic, do one of the following:

(1) Move the vehicle into a lane that is not the lane nearest the parked or standing authorized emergency ~~vehicle or~~ vehicle, public service ~~vehicle~~ vehicle, or rural letter carrier vehicle, and continue traveling in that lane until safely clear of the authorized emergency ~~vehicle.~~vehicle, public service vehicle, or rural letter carrier vehicle. This paragraph applies only if the roadway has at least two lanes for traffic proceeding in the direction of the approaching vehicle and if the approaching vehicle may change lanes safely and without interfering with any vehicular traffic.

(2) Slow the vehicle, maintaining a safe speed for traffic conditions, and operate the vehicle at a reduced speed and be prepared to stop until completely past the authorized emergency ~~vehicle or~~ vehicle, public service ~~vehicle.~~ vehicle, or rural letter carrier vehicle. This paragraph applies only if the roadway has only one lane for traffic proceeding in the direction of the approaching vehicle or if the approaching vehicle may not change lanes safely and without interfering with any vehicular traffic.

For purposes of this section, "public service vehicle" means a vehicle that is being used to assist motorists or law enforcement officers with wrecked or disabled vehicles, and is operating an amber-colored flashing light authorized by G.S. 20-130.2. Violation of this subsection shall be negligence per se."

SECTION 3. G.S. 20-161(a) reads as rewritten:

"(a) No person shall park or leave standing any vehicle, whether attended or unattended, upon the ~~paved or~~ main-traveled portion of any highway or highway bridge ~~outside municipal corporate limits~~ with the speed limit posted less than 45 miles per hour unless the vehicle is disabled to such an extent that it is impossible to avoid stopping and temporarily leaving the vehicle upon the paved or main traveled portion of the highway or highway bridge."

SECTION 4. G.S. 20-161 is amended by adding a new subsection to read:

"(a1) No person shall park or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled portion of any highway or highway bridge with the speed limit posted 45 miles per hour or greater unless the vehicle is disabled to such an extent that it is impossible to avoid stopping and temporarily leaving the vehicle upon the paved or main traveled portion of the highway or highway bridge."

SECTION 5. G.S. 20-161(b) reads as rewritten:

"(b) No person shall park or leave standing any vehicle upon the shoulder of a public highway ~~outside municipal corporate limits~~ unless the vehicle can be clearly seen by approaching drivers from a distance of 200 feet in both directions and does not obstruct the normal movement of traffic."

SECTION 6. G.S. 20-183.8G(b) reads as rewritten:

"(b) Hearing After Statement of Charges. – When a license holder receives a statement of charges of a violation that could result in the suspension or revocation of the person's license, the person can obtain a hearing by making a request for a hearing. The person must make the request to the Division within 10 days after receiving the statement of the charges. A person who does not request a hearing within this time limit waives the right to a hearing.

The Division must hold a hearing requested under this subsection within ~~three business~~15 business days after receiving the ~~request unless the person requesting the hearing asks for additional time to prepare for the hearing.~~request. ~~A person may ask for no more than seven additional business days to prepare. If the additional time requested is within this limit, the Division must grant a person the additional time requested.~~ The hearing must be held at the location designated by the Division. Suspension or revocation of the license is stayed until a decision is made following the hearing.

If a person does not request a hearing within the time allowed for making the request, the proposed suspension or revocation becomes effective the day after the time for making the request ends. If a person requests a hearing but does not attend the hearing, the proposed suspension or revocation becomes effective the day after the date set for the hearing."

SECTION 7. G.S. 20-218 reads as rewritten:

"**§ 20-218. Standard qualifications for school bus drivers; speed limit for school buses and school activity buses.**

(a) Qualifications. – No person shall drive a school bus over the highways or public vehicular areas of North Carolina while it is occupied by ~~children~~ one or more child passengers unless the person furnishes to the superintendent of the schools of the county in which the bus shall be operated a certificate from any representative duly designated by the Commissioner and from the Director of Transportation or a designee of the Director in charge of school buses in the county showing that the person has been examined by them and is fit and competent to drive a school bus over the highways and public vehicular areas of the State. The driver of a school bus must be at least 18 years of age and hold a Class A, B, or C commercial drivers license and a school bus driver's certificate. The driver of a school activity bus must meet the same qualifications as a school bus driver or must have a license appropriate for the class of vehicle being driven.

(b) Speed Limits. – It is unlawful to drive a school bus ~~loaded with children~~ occupied by one or more child passengers over the highways or public vehicular areas of the State at a greater rate of speed than 45 miles per hour. It is unlawful to drive a school activity bus ~~loaded with children~~ occupied by one or more child passengers over the highways or public vehicular areas of North Carolina at a greater rate of speed than 55 miles per hour.

(c) Punishment. – A person who violates this section commits a Class 3 misdemeanor."

SECTION 8. G.S. 136-17.2A(a) reads as rewritten:

"(a) Funds expended for the Intrastate System projects listed in G.S. 136-179 and both State and federal-aid funds expended under the Transportation Improvement Program, other than federal congestion mitigation and air quality improvement program funds appropriated to the State by the United States pursuant to 23 U.S.C. § 104(b)(2) and 23 U.S.C. § 149, funds expended on an urban loop project listed in ~~G.S. 136-180~~ G.S. 136-180, funds from the Appalachian Regional Commission for the Appalachian Development Highway System, and funds received through competitive awards or discretionary grants through federal appropriations either for local governments, transportation authorities, transit authorities, or the Department, shall be distributed throughout the State in accordance with this section.

(1) Distribution Region A consists of the following counties: Bertie, Camden, Chowan, Currituck, Dare, Edgecombe, Gates, Halifax, Hertford, Hyde, Johnston, Martin, Nash, Northampton, Pasquotank, Perquimans, Tyrrell, Washington, Wayne, and Wilson.

(2) Distribution Region B consists of the following counties: Beaufort, Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Pitt, and Sampson.

(3) Distribution Region C consists of the following counties: Bladen, Columbus, Cumberland, Durham, Franklin, Granville, Harnett, Person, Robeson, Vance, Wake, and Warren.

(4) Distribution Region D consists of the following counties: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Orange, Rockingham, Rowan, and Stokes.

(5) Distribution Region E consists of the following counties: Anson, Cabarrus, Chatham, Hoke, Lee, Mecklenburg, Montgomery, Moore, Randolph, Richmond, Scotland, Stanly, and Union.

(6) Distribution Region F consists of the following counties: Alexander, Alleghany, Ashe, Avery, Caldwell, Catawba, Cleveland, Gaston, Iredell, Lincoln, Surry, Watauga, Wilkes, and Yadkin.

(7) Distribution Region G consists of the following counties: Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey."

SECTION 9. G.S. 136-17.2A(i) reads as rewritten:

"(i) All funds ~~derived from~~ used in repayment of "GARVEE" bonds issued pursuant to G.S. 136-18(12b) shall be ~~distributed in accordance with~~ subject to the provisions of this section."

SECTION 10. Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-44.2D. Appalachian Development Highway System corridor funds.**

The Department of Transportation shall use all funds received from the Appalachian Regional Commission for the Appalachian Development Highway System to complete construction of the Appalachian Development Highway System roads."

SECTION 11. G.S. 160A-300.1(c1) reads as rewritten:

"(c1) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified ~~in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~on the traffic signal plan of record signed and sealed by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes, and shall comply with the provisions of the Manual on Uniform Traffic Control Devices."

SECTION 12. G.S. 160A-300.2(e), as enacted by Section 3 of S.L. 2001-286, reads as rewritten:

"(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified ~~in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~ on the traffic signal plan of record signed and sealed by a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes, and shall comply with the provisions of the Manual on Uniform Traffic Control Devices."

SECTION 13. G.S. 160A-300.3(e), as enacted by Section 4 of S.L. 2001-286, reads as rewritten:

"(e) The duration of the yellow light change interval at intersections where traffic control photographic systems are in use shall be no less than the yellow light change interval duration specified ~~in the Design Manual developed by the Signals and Geometrics Section of the North Carolina Department of Transportation.~~ on the traffic signal plan of record signed and sealed by

a professional engineer, licensed in accordance with the provisions of Chapter 89C of the General Statutes, and shall comply with the provisions of the Manual on Uniform Traffic Control Devices."

SECTION 14. G.S. 160A-303(b1)(4) reads as rewritten:

"(4) Is left on any public street or highway for longer than seven ~~days.~~days or is determined by law enforcement to be a hazard to the motoring public."

SECTION 15. Sections 1, 2, 3, 4, 5, and 7 of this act become effective December 1, 2009, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 1312:
Omnibus Highway/MV Statute Changes

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	August 3, 2009
Introduced by:	Rep. Martin	**Prepared by:**	Giles S. Perry
Analysis of:	PCS to Second Edition H1312-CSRW-47		Committee Counsel

SUMMARY: ***House Bill 1312 makes several changes to the highway and motor vehicle related laws of the State.***

CURRENT LAW & BILL ANALYSIS:

Section 1 of the bill amends the law requiring drivers to pull over and stop when approached by a fire or rescue vehicle giving a warning signal. The current requirement to pull over and stop does not apply when the fire or rescue vehicles is traveling in the opposite direction on a "four lane limited access highway with a median divider." This section changes the exception to *any* highway with a median divider.

Section 2 of the bill amends the requirement to "move over" when passing a parked emergency vehicle, to make clear it applies to public service vehicles. Extends applicability of the "move over" law to rural letter carriers. (this provision added by PCS)

Section 3 of the bill changes the current prohibition on parking on the *paved or main traveled* portion of a highway or highway bridge *outside municipalities* to a prohibition on parking on the *main traveled* portion of *all* highways with a *speed limit posted less than 45 miles per hour.* (this section revised by the PCS)

Section 4 of the bill prohibits parking upon the *paved or main-traveled* portion of any highway or highway bridge *with the speed limit posted 45 miles per hour or greater.* (this section added by the PCS)

Section 5 of the bill expands the current prohibition on parking on the *shoulder* of a highway *outside municipalities* to *all* highways, both in and outside of municipalities. (this section revised by the PCS)

Section 6 of the bill changes the time period in which the Division of Motor Vehicles must hold an administrative hearing for a violation of the motor vehicle inspection program statutes by an emissions inspection station license holder from three to fifteen days after receiving the request. (The provisions of this section were incorporated from House Bill 754).

Section 7 of the bill clarifies that the qualifications for operation and limitations on speed while operating a school bus or school activity bus apply if the bus is occupied by one child, or multiple children. (The provisions of this section were incorporated from House Bill 753).

Section 8 of the bill exempts funds from the Appalachian Regional Commission for the Appalachian Development Highway System from the State equity distribution formula for transportation funds expended on State intrastate system projects and under the State Transportation Improvement Program. (this section added by the PCS)

Section 9 of the bill clarifies the current requirement that all funds derived from GARVEE bonds be distributed in accordance with the State equity distribution formula for transportation funds to specify that the GARVEE funds will be subject to the equity formula when repaid. GARVEE bonds are debt instrument financing mechanisms that use payment of future Federal-aid highway funds to retire the bond. (this section rewritten by the PCS)

Section 10 of the bill directs DOT to use all funds it receives for the Appalachian Development Highway System from the Appalachian Regional Commission for construction of Appalachian Development Highway System roads. (this Section added by the PCS)

Sections 11, 12, and 13 of the bill amend the red light camera laws to change the standard to be used to determine the duration of a yellow light at red light camera intersections from the yellow light duration specified in the DOT Signals and Geometrics Section Design Manual to the duration in the traffic signal plan of record signed and sealed by a licensed professional engineer, and in compliance with Manual on Uniform Traffic Control Devices.

Section 14 of the bill changes the statute that authorizes municipalities to prohibit the abandonment of motor vehicles on public streets and on private property. This section would allow the removal and disposal of abandoned vehicles left on a public street at any time, if the motor vehicle is determined to be a hazard to the motoring public. Current law required the vehicle to have been left seven days.

EFFECTIVE DATE: Sections 1, 2, 3, 4, 5 and 7 of this act become effective December 1, 2009, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

H1312-SMRW-181(CSRW-47) v2

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

MINUTES

June 15, 2010
Room 1027
Legislative Building

Welcome and Attendance

The Senate Judicary I Committee convened for its first meeting of the legislative Short Session June 15, 2010 at ten o'clock in the morning of June 15, 2010. Chairman Martin Nesbitt called the meeting to order and welcomed members and guests for the Committee.

In attendance with Chairman Nesbitt were Vice Chairman Dan Clodfelter, Vice Chairman Pete Brunstetter, Vice Chairman R. C. Soles and Vice Chairman Josh Stein. Also present were Committee members Senator Dan Blue, Senator Andrew Brock, Senator Harry Brown, Senator Margaret Dickson, Senator Malcolm Graham, Senator David Hoyle, Senator Clark Jenkins, Senator Ellie Kinnaird, Senator Floyd McKissick, Senator David Rouzer, Senator Richard Stevens and Senator Jerry Tillman. Staff present was Committee Counsel Erika Churchill, Giles Perry, Bill Patterson, Susan Sitze and Committee Assistant Jessica Kozma Proctor.

Senate Bill 254

Chairman Nesbitt called on Senator Vaughn to discuss Senate Bill 254, "Susie's Law." Susie's Law increases the malicious killing of any animal by "intentionally depriving the animal of sustenance" from the Class A1 misdemeanor to a Class H felony. With little discussion regarding the bill, Senator Vaughan motioned that the bill be passed from Committee Favorable to Concurrence. The motion carried unanimously. Interested parties may find a copy of "Susie's Law" at http://www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S254v2.pdf. A fiscal note regarding the Bill may also be found at http://www.ncleg.net/Sessions/2009/FiscalNotes/Senate/PDF/SIN0254v2r1.pdf.

Senate Bill 1242

Senator Nesbitt then recognized staff to discuss Senate Bill 1242, "Chapter 50B Fee Clarification. Interested parties may read a copy of the Bill by going to http://www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S1242v2.pdf.

Counsel Sitze explained both the Bill and its subsequent fiscal note, noting that there would be a fiscal impact upon levying 50b fees. Calling for discussion from Committee members, Chairman Nesbitt recognized Senator McKissick. Senator McKissick asked for "clarification" regarding the fees, particularly when "a case where the person was represented by pro bono counsel." Ms. Sitze said she was not aware of any impact in such instances.

Senator Kinnaird asked if you "could file for divorce under a 50b,." Ms. Sitze said that one could not. Ms Sitze added that a judge may grant temporary custody in a particular situation but could not issue a full custody order.

Senator Hoyle moved for favorable report. The motion carried unanimously.

House Bill 726

Chairman Nesbitt then called to discuss House Bill 726, which may be found at: http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H726v3.pdf.

A Proposed Committee Substitute was distributed to members and adopted for discussion by a motion by Senator Stein. Senator Doug Berger began but was asked to hold discussion until another Bill being handled in Committee by Representative Melanie Wade Goodwin was heard.

Senate Bill 59

Chairman Nesbit then moved to Senate Bill 59. Representative Goodwin explained that the bill, http://www.ncleg.net/Sessions/2009/Bills/Senate/PDF/S59v2.pdf, removed limited language that "the court may enter reasonable counsel fees," instead empowering the courts to order "reasonable" fees when deemed necessary. Chairman Nesbit asked who would speak to the Bill on the Senate floor. Senator Dickson said she would handle the Bill on the Senate floor.

A motion for concurrence by Senator Dickson was offered, and carried unanimously among the Committee.

Susan Pistoli of Legal Aid of Wake County was recognized. She commented that there were two issues for Legal Aid regarding the Bill: 1) for clients that cannot afford an attorney and 2) that Legal Aid cannot collect fees from clients.

House Bill 726

A PCS remained adopted for discussion by Committee members. Background of the bill is as follows: "During the 2009 Session, the General Assembly adopted S. L. 2009-510 (SB 262) and S. L. 2009-577, which both dealt with expunction issues. The two bills were both ratified on August 11, 2009, but were not reconciled with each other, resulting in some inconsistencies in various expunction statutes.

"Additionally, there was an error in the version of S.L. 2009-510 that was adopted o the House floor. The House Finance Committee was the last committee to consider the bill before the floor, and that committee adopted a committee substitute. However, when the bill was considered on the House floor, the committee substitute that the House Judiciary II Committee had adopted was mistakenly considered and adopted by the House. This resulted in several additional corrections to the bill not being adopted by the House."

Senator Doug Berger reiterated the Bill's erroneous journey. Chairman Nesbitt then called on Representative Moore, who said Senator Berger had done a "good job" of explaining the Bill.

Chairman Nesbitt called for discussion among Committee members. Senator Blue asked technical questions regarding Section D1 of the Bill. Ms. Sitze explained that the section was completely new legislation. Blue shared concerns regardin the length of time prior to an expunction. After some discussion regarding this, Senator Stein offered an amendment changing the Bill on Page 3, Line 22, to delete the phrase "10 year" and substituting the phrase "15 year." The amendment passed unanimously.

After further discussion Chairman Nesbitt ordered that the bill to be moved to a study committee. The meeting was adjourned at 10:55 a.m.

Senator Martin Nesbitt, Jr.
Chairman

Jessica Kozma Proctor
Committee Clerk

AGENDA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

SENATOR MARTIN L. NESBITT, CHAIRMAN
Senator Pete Brunstetter, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman
Senator Josh Stein, Vice Chairman

Tuesday, June 15, 2010
10 a.m.
Room 1027

1. **Call Meeting to Order.**

2. **Recognize members, staff, and guests.**

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
SB 254	Susie's Law	Senator Snow
SB 1242	Chapter 50B Fee Clarification.	Senator Graham
HB 726	Clarify Expunctions.	Representative Ross Representative Goodwin Representative Moore
SB 59	Atty. Fees/Alimony	Senator Rand

Adjournment.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Martin L. Nesbitt, Jr., Chair

Tuesday, June 15, 2010

Senator NESBITT, JR.,
submits the following with recommendations as to passage:

FAVORABLE

S.B. **1242** Chapter 50B Fee Clarification.
Sequential Referral: None
Recommended Referral: None

FAVORABLE AS TO CONCURRENCE

S.B.(HCS #1) **59** Atty. Fees/Alimony
Sequential Referral: None
Recommended Referral: None

S.B.(HCS #1) **254** Susie's Law
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 3

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 15, 2010 10 a.m. Room 1027 LV

NAME	FIRM OR AGENCY AND ADDRESS
Bob Wall	Visitor - 7410 Fairhaven Rd - Greensboro NC
Roberta Wall	" " " "
Donna Lawrence	116 Haverly Drive High Point NC 27265
Pam Hood	Visitor 4205 Belvoir Dr. Gso 27410
Gene Stoneburner	Visitor 3010 Westwood Blvd, Colo. Springs Colorado
Tom Bennett	NCVAN
[signature]	WCPSS
Katherine Joyce	NCASA
James Carson	[illegible]
Turner Sothoron	AG's office
Samuel Kilgore	AG's office

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 15, 2010 10 a.m. Room 1027 LV

NAME	FIRM OR AGENCY AND ADDRESS
Steve Strange	State Farm Ins.
Eddie Caldwell	NC Sheriffs' Assn.
Frank Tate	GEICO
Joe Thomas	GEICO
Cam Cope	BPMIL

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 15, 2010 10 a.m. Room 1027 LV

NAME	FIRM OR AGENCY AND ADDRESS
Cady Thomas	NC Assn of Realtors
Keely Greene	Susie's Law, Forsyth County
Lisa Caldwell	Susie's Law, Guilford County
Chris Simmons	Susie's Law, Harnett County
Anna McElroy	UNC-TV
Kenda Montgomery-Blinn	NCIIC
Sharon Becerra	NCIIC
Paige Worsham	School of Government
Chris Stanley	NCGA
Whitney Campbell	Jordan Price
Anthony M Allen	NCACC

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 15, 2010 10 a.m. Room 1027 LV

NAME	FIRM OR AGENCY AND ADDRESS
Rebecca Tanner	NCACC
ART LYON	GMAC INSURANCE WINSTON-SALEM
Mike Drummond	State Farm Insurance - Winston-Salem
Missy Easter	Nationwide Insurance + Financial Ser W-S
Lindsay Clifton	Governor's office
Dick Taylor	NCAJ
Tammy Smith	NC AOC
TROY PAGE	NC AOC
[illegible]	[illegible]
BRIAN DEWSEY	NWC
[illegible]	STATE FARM

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 15, 2010 10 a.m. Room 1027 LV

NAME	FIRM OR AGENCY AND ADDRESS
Chris Brooks	DOJ/DMV
Elizabeth Roper	NAACP
Celia Pistolis	Legal Aid of NC
Annaliese Dolph	DRNC
Damon Circosta	NC Vote Ed
Julia Adams	The Arc of NC
Jim Hardaway	J. Varn & Assoc.
JAMES A. WALLER	AARP - VOLUNTEER

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 254*
House Committee Substitute Favorable 5/25/10

Short Title: Susie's Law. (Public)

Sponsors:

Referred to:

February 23, 2009

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTY FOR THE MALICIOUS ABUSE, TORTURE, OR KILLING OF AN ANIMAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-360(a1) reads as rewritten:

"(a1) If any person shall maliciously kill, or cause or procure to be killed, any animal by intentional deprivation of necessary sustenance, that person shall be guilty of a ~~Class A1 misdemeanor.~~ Class H felony."

SECTION 2. G.S. 14-360(b) reads as rewritten:

"(b) If any person shall maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill, or cause or procure to be tortured, mutilated, maimed, cruelly beaten, disfigured, poisoned, or killed, any animal, every such offender shall for every such offense be guilty of a ~~Class I~~ Class H felony. However, nothing in this section shall be construed to increase the penalty for cockfighting provided for in G.S. 14-362."

SECTION 3. This act becomes effective December 1, 2010, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 1242*
Corrected Copy 5/21/10

Short Title:	Chapter 50B Fee Clarification.	(Public)
Sponsors:	Senators Graham; Atwater, Berger of Franklin, Blake, Boseman, Dorsett, East, Goodall, Jacumin, Jones, Purcell, Snow, Vaughan, and Walters.	
Referred to:	Judiciary I.	

May 20, 2010

A BILL TO BE ENTITLED

AN ACT TO CLARIFY WHEN COURT COSTS APPLY FOR AMENDMENTS AND COUNTERCLAIMS IN CHAPTER 50B OF THE GENERAL STATUTES ACTIONS, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-305(a1) reads as rewritten:

"(a1) Costs apply to any and all additional and subsequent actions filed by amendment or counterclaim to the original action brought under Chapter 50B of the General Statutes, unless such additional and subsequent amendment or counterclaim to the action is ~~also brought under~~limited to requests for relief authorized by Chapter 50B of the General Statutes."

SECTION 2. This act becomes effective October 1, 2010.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 59
House Committee Substitute Favorable 5/20/10

Short Title: Atty. Fees/Alimony. (Public)

Sponsors:

Referred to:

February 5, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AN ORDER FOR THE PAYMENT OF ATTORNEYS' FEES IN ACTIONS FOR ALIMONY OR POSTSEPARATION SUPPORT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-16.4 reads as rewritten:

"**§ 50-16.4. Counsel fees in actions for alimony, postseparation support.**

At any time that a dependent spouse would be entitled to alimony pursuant to G.S. 50-16.3A, or postseparation support pursuant to G.S. 50-16.2A, the court may, upon application of such spouse, enter an order for reasonable counsel ~~fees for the benefit of such spouse,~~ fees. to be paid and secured by the supporting spouse in the same manner as alimony."

SECTION 2. This act becomes effective October 1, 2010, and applies to fees for services rendered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 726
Committee Substitute Favorable 5/13/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H726-CSSA-74 [v.5]

6/14/2010 2:49:53 PM

Short Title: Clarify Expunctions. (Public)

Sponsors:

Referred to:

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO STATUTES RELATED TO EXPUNCTION OF RECORDS; TO REQUIRE STATE AND NATIONAL CRIMINAL RECORD CHECKS WHEN EXPUNGING RECORDS; AND TO REQUIRE SEX OFFENDERS RESIDING IN THIS STATE TO REGISTER AS A SEX OFFENDER FOR CONVICTIONS OBTAINED OUTSIDE THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-50.30 reads as rewritten:

"**§ 14-50.30. Expunction of records.**

Any person who has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state, may, if the offense was committed before the person attained the age of 18 years, be eligible to apply for expunction of certain offenses under this Article pursuant to G.S. 15A-145.1.

~~information and that the conviction be expunged from the records of the court. agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as conviction petitioner's shall notify State and local agencies of the court's order as provided in G.S. 15A-150.~~"

SECTION 2. G.S. 15A-145(a) reads as rewritten:

"(a) Whenever any person who has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic violation, and the offense was committed before the person attained the age of 18 years, or (ii) pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), and the offense was committed before the person attained the age of 21 years, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a

traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

~~(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.~~

(4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable."

SECTION 3. G.S. 15A-145(d1) reads as rewritten:

"(d1) Notwithstanding subsection (a) of this section and any other provision of law, a person may file a petition in the court where the person was convicted for expunction of a misdemeanor conviction from the person's criminal record if the person has no prior felony convictions and was convicted for misdemeanor larceny pursuant to G.S. 14-72(a) more than 15 years prior to the filing of the petition.

The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has not been convicted of any felony, has been of good behavior for the 15-year period preceding the filing of the petition, and has not been convicted of any misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state during the 15-year period.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

~~(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State during the 10-year period preceding the filing of the petition.~~

(4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the 10-year period that he deems desirable.

If the court, after hearing, finds that the petitioner had remained of good behavior and been free on conviction of any felony or misdemeanor, other than a traffic violation, during the ~~10-year~~15-year period preceding the petition, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and the petitioner was convicted of misdemeanor larceny pursuant to G.S. 14-72(a) more than ~~10~~15 years prior to the filing of the petition, it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

The provisions of subsections (c), (d), and (e) of this section shall apply to a petition for expunction filed or granted pursuant to this subsection."

SECTION 4. G.S. 15A-145.1 reads as rewritten:

§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.

(a) Whenever any person who has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, or has been discharged and had the proceedings against the person dismissed pursuant to G.S. 14-50.29, and the offense was committed before the person attained the age of 18 years, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.

(3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

~~(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the offense in question or during the two-year period following that conviction, whichever applies.~~

(4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period or during the two-year period after conviction.

(b) If the court, after hearing, finds that (i) the petitioner was dismissed and the proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation for two years from the date of conviction of the offense in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against ~~him~~the petitioner, and the petitioner had not attained the age of 18 years at the time of the offense in question, it shall order that such person be restored, in the contemplation of the law, to the status occupied by the petitioner before such arrest or indictment or ~~information.~~ information, and that the record be expunged from the records of the court. No person as to whom such order has been entered shall be held thereafter under any provision of

any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such arrest, or indictment or information, or trial, or response to any inquiry made of the person for any purpose. The court shall also ~~order that the said conviction be expunged from the records of the court and~~ direct all law enforcement ~~agencies~~ agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's criminal charge and any conviction ~~as the result of a criminal~~resulting from the charge. The clerk shall ~~forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief of police, or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.~~notify State and local agencies of the court's order as provided in G.S. 15A-150.

(c) This section is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina."

SECTION 5. G.S. 15A-145.2 reads as rewritten:

"**§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.**

(a) Whenever a person is discharged, and the proceedings against the person dismissed, pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the offense, the person may apply to the court for an order to expunge from all official ~~records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-96(c))~~ records, other than the confidential files retained under G.S. 15A-151, all recordation relating to ~~his~~ the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the ~~applicant~~ petitioner that he or she has been of good behavior during the period of probation since the decision to defer further proceedings on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the ~~applicant~~ petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he or she lives, and that ~~his~~ the petitioner's character and reputation are good;

~~(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the offense in question or during the period of probation following the decision to defer further proceedings on the offense in question.~~

(3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department

of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against him or her dismissed and that ~~he~~ the person was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status ~~he~~ the person occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of ~~his~~ the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that ~~said conviction and the records relating thereto~~all records of the proceeding be expunged from the records of the court and direct all law enforcement ~~agencies~~ agencies, the Department of Correction, the Division of Motor Vehicles, and any other State and local government agencies identified by the petitioner as bearing records of the same to expunge their records of the ~~conviction.~~proceeding. The clerk shall ~~forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff, chief of police, or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~notify State and local agencies of the court's order as provided in G.S. 15A-150.

(b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of the charges against ~~him,~~the person, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his or her arrest, indictment or information, or trial. If the court determines, after hearing, that such person was not over 21 years of age at the time the offense for which the person was charged occurred, it shall enter such order. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of ~~his~~ the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

(c) Whenever any person who has not previously been convicted of an offense under Article 5 of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of ~~his~~the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been canceled and the

records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official ~~records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-96(c))~~records, other than the confidential files retained under G.S. 15A-151, all recordation relating to the petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of Chapter 90 of the General Statutes for possessing a controlled substance included within Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or for possessing drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that ~~he~~ the petitioner was not over 21 years of age at the time of the offense, that ~~he~~ the petitioner has been of good behavior since his or her conviction, that ~~he~~ the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that ~~he~~ the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the offense in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status ~~he~~ the petitioner occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of ~~his~~ the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order all law enforcement ~~agencies~~ agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall ~~forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~notify State and local agencies of the court's order as provided in G.S. 15A-150.

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been canceled and expunged under the provisions of this subsection, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been canceled and expunged. The information contained in the file shall be disclosed only~~

~~to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 of Chapter 90 of the General Statutes has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this subsection.~~

(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 6. G.S. 15A-145.3 reads as rewritten:

"**§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.**

(a) Whenever a person is discharged and the proceedings against the person dismissed under G.S. 90-113.14(a) or (a1), such person, if he or she was not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official ~~records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-113.14(c))~~ records, other than the confidential files retained under G.S. 15A-151, all recordation relating to ~~his~~ the person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

(1) An affidavit by the ~~applicant that he~~petitioner that the petitioner has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state;

(2) Verified affidavits by two persons who are not related to the ~~applicant~~ petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which ~~he~~ the petitioner lives, and that his or her character and reputation are good;

~~(3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.~~

(3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was discharged and the proceedings against ~~him~~ the person dismissed and that he or she was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status ~~he~~ the person occupied before such arrest or

indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of ~~his~~ the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that ~~said conviction and the records relating thereto~~all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies bearing records of the same to expunge their records of the ~~conviction.~~proceeding. The clerk shall ~~forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff, chief of police, or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~notify State and local agencies of the court's order as provided in G.S. 15A-150.

(b) Whenever any person is charged with a misdemeanor under Article 5A of Chapter 90 of the General Statutes or possessing drug paraphernalia as prohibited by G.S. 90-113.22, upon dismissal by the State of the charges against ~~him~~ the person or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to ~~his~~ the person's arrest, indictment or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time the offense for which the person was charged occurred, it shall enter such order. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of ~~his~~ the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

(c) Whenever any person who has not previously been convicted of an offense under Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of ~~his~~ the person's arrest, indictment or information, trial, and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction under this subsection may occur only once with respect to any person. Disposition of a case under this subsection at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this subsection shall cause the issue of an order to expunge from all official ~~records (other than the confidential file to be retained by the Administrative Office of the Courts under G.S. 90-113.14(c))~~records, other than the confidential files retained under G.S. 15A-151, all recordation relating to ~~his~~ the person's arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this subsection.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the

court determines that the petitioner was convicted of a misdemeanor under Article 5A of Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by G.S. 90-113.22, that ~~he~~ the petitioner was not over 21 years of age at the time of the offense, that the petitioner ~~he~~ has been of good behavior since his or her conviction, that the petitioner ~~he~~ has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner ~~he~~ has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of ~~his~~ the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The ~~court~~ clerk shall ~~also order all law enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.~~ notify State and local agencies of the court's order as provided in G.S. 15A-150.

~~The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this subsection, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5A of Chapter 90 of the General Statutes has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this subsection.~~"

SECTION 7. G.S. 15A-150 reads as rewritten:

"**§ 15A-150. Notification requirements.**

(a) Notification to AOC. – The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court, file with the Administrative Office of the Courts the names of the following:

(1) Persons granted ~~a discharge or~~ an expunction under this Article.

(2) Persons granted ~~an expunctiona~~ conditional discharge under ~~G.S. 14-50.29 or G.S. 14-50.30.~~G.S. 14-50.29.

(3) Persons granted a conditional discharge ~~or an expunction~~ under G.S. 90-96 or G.S. 90-113.14.

~~(4) Persons whose judgments of convictions have been canceled and expunged under G.S. 90-96 or G.S. 90-113.14.~~

(b) Notification to Other State and Local Agencies. – The clerk of superior court in each county in North Carolina shall send a certified copy of an order granting an expunction to a person named in subsection (a) of this section to all of the agencies listed in this subsection.

An agency receiving an order under this subsection shall expunge from its records all entries made as a result of the charge or conviction ordered ~~expunged.~~ expunged, except as provided in G.S. 15A-151.

(1) The sheriff, chief of police, or other arresting agency.

(2) When applicable, the Division of Motor Vehicles and the Department of Correction.

(3) Any State or local agency identified by the petition as bearing record of the offense that has been expunged.

(c) Notification to SBI and FBI. – An arresting agency that receives a certified copy of an order under this section shall forward a copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation. The State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(d) Notification to Private Entities. – A State agency that receives a certified copy of an order under this section shall notify any private entity with which it has a licensing agreement for bulk extracts of data from the agency criminal record database to delete the record in question. The private entity shall notify any other entity to which it subsequently provides in a bulk extract data from the agency criminal database to delete the record in question from its database."

SECTION 8. G.S. 15A-151 reads as rewritten:

"**§ 15A-151. ~~AOC maintain confidential file.~~Confidential agency files; exceptions to expunction.**

"(a) The Administrative Office of the Courts shall maintain a confidential file containing the names of those people for whom it received a notice under G.S. 15A-150. The information contained in the file may be disclosed only as follows:

(1) To a judge of the General Court of Justice of North Carolina for the purpose of ascertaining whether a person charged with an offense has been previously granted a discharge or an expunction.

(2) To a person requesting confirmation of the person's own discharge or expunction, as provided in G.S. 15A-152.

(3) To the General Court of Justice of North Carolina in response to a subpoena or other court order issued pursuant to a civil action under G.S. 15A-152.

(b) All agencies required under G.S. 15A-150 to expunge from records all entries made as a result of a charge or conviction ordered expunged who maintain a licensing agreement to provide record information to a private entity shall maintain a confidential file containing information verifying the expunction and subsequent notification to private entities as required by G.S. 15A-150(d). The information contained in the file shall be disclosed only to a person requesting confirmation of expunction of the record of the person's own discharge or expunction, as provided in G.S. 15A-152.

(c) The Division of Motor Vehicles shall not be required to expunge a record if the expunction of the record is expressly prohibited by the federal Commercial Motor Vehicle Safety Act of 1986, the federal Motor Carrier Safety Improvement Act of 1999, or regulations adopted pursuant to either act."

SECTION 9. G.S. 15A-152 reads as rewritten:

"**§ 15A-152. Civil liability for dissemination of certain criminal history information.**

(a) Duty to Delete Record. – A private entity that holds itself out as being in the business of compiling and disseminating criminal history record information for compensation shall destroy and shall not disseminate any information in the possession of the entity with respect to which the entity has received a notice to delete the record in question. The private entity shall delete the record within the specified time and pursuant to the terms of the licensing agreement with the state agency. If the license does not specify a time for deletion, or if no

license agreement exists between the private entity and state agency, the private entity shall delete the record within ten business days of receiving notice to delete the record in question.

(b) Dissemination of Information. – Unless the entity is regulated by the federal Fair Credit Reporting, Act 15 U.S.C. § 1681, et seq. or the Gramm-Leach-Bliley Act 15 U.S.C. §§ 6801-6809, a private entity described by subsection (a) of this section that is licensed to access a State agency's criminal history record database may disseminate that information only if, within the 90-day period preceding the date of dissemination, the entity originally obtained the information or received the information as an updated record information to its database. The private entity must notify the State agency from which it receives the information of any other entity to which it subsequently provides a bulk extract of the information.

(c) Civil Liability. – A private entity subject to the provisions of this section that disseminates information in violation of this section is liable for any damages that are sustained as a result of the violation by the person who is the subject of that information. A person who prevails in an action brought under this section is also entitled to recover court costs and reasonable attorneys' fees. This subsection does not apply to an entity regulated by and subject to the civil liability remedies of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., or the Gramm Leach-Bliley Act, 15 U.S.C. 6801-6809, et seq.

(d) Certificate of Verification. – Prior to filing an action under this section, a person who is the subject of a record that has been expunged may apply to the Administrative Office of the Courts for a certificate verifying that the person is the subject of a record that has been expunged and that notice of the expunction was made in accordance with G.S. 15A-150. The application must include a sworn affidavit attesting, under penalty of perjury, that the applicant is the person who was the subject of the record in question and identifying the specific case expunged. A notary or official taking an acknowledgment, oath, or affirmation of an ~~applicant~~ applicant's affidavit under this subsection may not disclose the nature ~~of~~ or content of the application, except as required in a court action related to the application. Unless made part of the record of a subsequent court proceeding, a certificate of verification and an application for the certificate are not public records under G.S. 132-1. The Administrative Office of the Courts may establish procedures pertaining to the application for and issuance of certificates of verification.

(e) Notice of Record Removal. – Prior to filing an action under this section, a person who is the subject of a record that has been expunged may request a notice of record removal of the expunction and subsequent notification to private entities as required by G.S. 15A-150(d) from an agency required under G.S. 15A-150 to expunge that person's record who maintains a licensing agreement to provide record information to a private entity. The application must include a sworn affidavit attesting, under penalty of perjury, that the applicant is the person who was the subject of the record in question and identifying the specific case expunged. A notary or official taking an acknowledgment, oath, or affirmation of an applicant's affidavit under this subsection may not disclose the nature or content of the application, except as required in a court action related to the application. Unless made part of the record of a subsequent court proceeding, a notice of record removal and an application for the notice are not public records under G.S. 132-1. State and local agencies may establish procedures pertaining to the application for and issuance of notices of record removal."

SECTION 10. G.S. 90-96(b) reads as rewritten:

"(b) Upon the discharge of such person, and dismissal of the proceedings against ~~him~~ the person under subsection (a) or (a1) of this section, such person, if he ~~were~~ or she was not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(a).

~~other than the confidential file retained by the Administrative Office of the Courts under G.S. 15A-151, agencies, the Department of Correction, the Division of Motor Vehicles, and~~

~~any other State or local government agencies identified by the petitioner as notify State and local agencies of the court's order as provided in G.S. 15A-150.~~"

SECTION 11. G.S. 90-96(d) reads as rewritten:

"(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article or a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of the charges against ~~him,~~such person, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(b). ~~The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.~~"

SECTION 12. G.S. 90-96(e) reads as rewritten:

"(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.2(c).

~~other than the confidential file retained by the Administrative Office of the Courts under G.S. 15A-151, agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agency identified by the petitioner as notify State and local agencies of the court's order as provided in G.S. 15A-150.~~"

SECTION 13. G.S. 90-113.14(b) reads as rewritten:

"(b) Upon the dismissal of such person, and discharge of the proceedings against ~~him~~ the person under subsection (a) or (a1) of this section, such person, if he or she was~~were~~ not over 21 years of age at the time of the offense, may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(a).

~~other than the confidential file retained by the Administrative Office of the Courts under G.S. 15A-151, notify State and local agencies of the court's order as provided in G.S. 15A-150.~~"

SECTION 14. G.S. 90-113.14(d) reads as rewritten:

"(d) Whenever any person is charged with a misdemeanor under this Article or possessing drug paraphernalia as prohibited by G.S. 90-113.22 upon dismissal by the State of the charges against him or her or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, the person may be eligible to apply for expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(b). ~~The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.~~"

SECTION 15. G.S. 90-113.14(e) reads as rewritten:

"(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of a misdemeanor under this Article, the person may be eligible to apply for cancellation of the judgment and expunction of certain records related to the offense pursuant to G.S. 15A-145.3(c).

~~other than the confidential file retained by the Administrative Office of the Courts under G.S. 15A-151, notify State and local agencies of the court's order as provided in G.S. 15A-150.~~"

SECTION 16. Section 19.(e) of S.L. 2006-247 reads as rewritten:

"**SECTION 19.(e)** Section 19.(a) of this act becomes effective December 1, 2006, and applies to all offenses committed ~~on~~ prior to, on or after that date and to all individuals who move into this State ~~on~~ prior to, on or after that date. The remainder of this section becomes effective December 1, 2006, and applies to all applications for a drivers license, learner's permit, instruction permit, or special identification card submitted on or after that date."

SECTION 17. Sections 7, 8, 9, and 16 of this act become effective October 1, 2010. The remainder of this act becomes effective October 1, 2010, and applies to petitions for expunctions filed on or after that date.

HOUSE BILL 726
Committee Substitute Favorable 5/13/09

Short Title: Clarify Expunctions. (Public)

Sponsors:

Referred to:

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON'S RECORD MAY BE EXPUNGED FOR A FIRST MISDEMEANOR OFFENSE COMMITTED WHEN THE PERSON WAS LESS THAN EIGHTEEN YEARS OLD EVEN THOUGH THE PERSON IS EIGHTEEN YEARS OLD OR OLDER AT THE TIME OF CONVICTION; TO PROVIDE THAT A PERSON'S RECORD MAY BE EXPUNGED FOR A FIRST MISDEMEANOR POSSESSION OF ALCOHOL OFFENSE COMMITTED WHEN THE PERSON WAS LESS THAN TWENTY-ONE YEARS OLD EVEN THOUGH THE PERSON IS TWENTY-ONE YEARS OR OLDER AT THE TIME OF THE CONVICTION; TO REQUIRE STATE AND NATIONAL CRIMINAL RECORD CHECKS WHEN EXPUNGING RECORDS; AND TO PROVIDE THAT ANY PERSON OR ENTITY REQUIRED TO OBTAIN A CRIMINAL RECORD CHECK WOULD NOT BE DEEMED TO HAVE KNOWLEDGE OF OFFENSES EXPUNGED UNDER THE STATUTE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-145 reads as rewritten:

"**§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of ~~conviction~~ commission of misdemeanor; expunction of certain other misdemeanors.**

(a) Whenever any person who ~~has (i) not yet attained the age of 18 years~~ (i) committed a misdemeanor when the person was less than 18 years old and who has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) ~~not yet attained the age of 21 years~~ committed a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1) when the person was less than 21 years old and who has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), ~~he~~ the person may file a petition in the court where he or she was convicted for expunction of the misdemeanor from his or her criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that ~~he~~ the petitioner has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or

misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which ~~he~~ the petitioner lives and that his or her character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

~~(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.~~

(4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him or her are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against ~~him,~~him or her, and (i) petitioner was not 18 years old at the time of the ~~conviction~~ commission of the misdemeanor in question, or (ii) petitioner was not 21 years old at the time of the ~~conviction~~ commission of the offense of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he or she occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him or her for any purpose.

(c) The court shall also order that the said misdemeanor conviction, or a civil revocation of a drivers license as the result of a criminal charge, be expunged from the records of the court, and direct all law-enforcement agencies, including the Division of Motor Vehicles, bearing record of the same to expunge their records of the conviction or a civil revocation of a drivers license as the result of a criminal charge. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2.

The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(c1) Any other applicable State or local government agency shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in ~~his~~ the clerk's county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred twenty-five dollars ($125.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent.

(f) Notwithstanding any other provision of law, no person or entity required under State or federal law to obtain a criminal record check prior to employment shall be deemed to have knowledge of any offense expunged pursuant to this section."

SECTION 2. This act becomes effective December 1, 2009, and applies to petitions for expunctions filed on or after that date.

SENATE BILL 254: Susie's Law

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 14, 2010
Introduced by:	Sen. Snow	**Prepared by:**	Susan Sitze*
Analysis of:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 254 would do the following:

- ***Increase the penalty for maliciously killing an animal by intentional deprivation of necessary sustenance from a Class A1 misdemeanor to a Class H felony.***
- ***Increase the penalty for maliciously torturing, mutilating, maiming, cruelly beating, disfiguring, poisoning, or killing an animal from a Class I felony to a Class H felony.***

CURRENT LAW: G.S. 14-360(a1) makes it unlawful to maliciously kill, or cause or procure to be killed, any animal by intentionally depriving the animal of necessary sustenance. Violation is a Class A1 misdemeanor. Assuming no prior convictions, a Class A1 misdemeanor is punishable by 1-60 days of community, intermediate, or active punishment and a fine in the discretion of the court.

G.S. 14-360(b) makes it unlawful to maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill, or cause or procure to be tortured, etc., any animal. Violation is a Class I felony. Assuming no prior convictions, a Class I felony is punishable by 3-10 months of community punishment and a fine in the discretion of the court.

Neither provision applies to the following activities:

- The lawful taking of animals under regulation of the Wildlife Resources Commission.
- Lawful activities conducted for biomedical research or training or for production of livestock, poultry, or aquatic species.
- Lawful activities conducted for the primary purpose of providing food.
- Lawful destruction of animals to protect the public, other animals, property, or the public health.
- Physical alteration of livestock or poultry to conform with breed or show standards.

BILL ANALYSIS: Senate Bill 254 would increase the penalty under G.S. 14-360(a1) and (b) to a Class H felony. The penalty for maliciously killing an animal by intentionally depriving it of necessary sustenance would increase from a Class A1 misdemeanor to a Class H felony. The penalty for maliciously torturing, mutilating, maiming, cruelly beating, disfiguring, poisoning, or killing and animal would increase from a Class I felony to a Class H felony.

Assuming no prior convictions, a Class H felony is punishable by 4-10 months of community, intermediate, or active punishment and a fine in the discretion of the court.

EFFECTIVE DATE: The act would become effective December 1, 2010, and would apply to offenses committed on or after that date.

S254-SMSA-147(e2) v1

**This summary was substantially prepared by WendyRay, Staff Attorney.*

SENATE BILL 59:
Atty. Fees/Alimony

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 14, 2010
Introduced by:	Sen. Rand	**Prepared by:**	Giles S. Perry
Analysis of:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 59 amends G.S. 50-16.4, *Counsel fees in actions for alimony, postseparation support*, to delete language requiring attorney fees to be awarded "for the benefit of" the applying spouse.

The bill addresses an issue raised by the N.C. Supreme Court in Patronelli v. Patronelli, 360 N.C. 628 (2006). In that case, the Court upheld the trial court's denial of attorney's fees to a defendant spouse who was represented by *pro bono* counsel. The Court held that attorney's fees could not be awarded under the statute because the fees were not "for the benefit of" the defendant spouse, as required by the statute, but were for the benefit of pro bono counsel.

BACKGROUND: In Patronelli, the defendant spouse was represented on a *pro bono* basis through the Volunteer Lawyers Program. The trial court denied the defendant's request for attorney's fees, concluding that the defendant had not incurred any attorney's fees. The N.C. Court of Appeals affirmed the trial court's ruling, by majority opinion with one dissent, and the case was appealed to the N.C. Supreme Court.

As stated above, the Supreme Court affirmed the decision of the Court of Appeals. Citing G.S. 50-16.4, the Court held that any attorney's fees ordered by the court would not have been "for the benefit of" the defendant, but would have been for the benefit of defendant's *pro bono* counsel. A two-justice dissenting opinion argued that this was not the intent of the General Assembly and maintained a broader, less restrictive interpretation of the phrase "for the benefit of" was required.

EFFECTIVE DATE: Senate Bill 59 becomes effective October 1, 2010 and applies to fees for services rendered on or after that date.

Tim Hovis of the Research Division substantially contributed to this summary.

S59-SMRW-199(e2) v1

SENATE BILL 1242:
Chapter 50B Fee Clarification

2009-2010 General Assembly

Committee:	Senate Judiciary I	Date:	June 14, 2010
Introduced by:	Sen. Graham	Prepared by:	Susan Sitze*
Analysis of:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 1242 would clarify when court costs apply for amendments and counterclaims in domestic violence actions.

[As introduced, this bill was identical to H1874, as introduced by Reps. Ross, Goodwin, McLawhorn, Rhyne, which is currently in House Finance.]

CURRENT LAW: Currently, G.S. 7A-305 provides for the assessment of court costs in civil actions. The amounts vary according to the courts where the action is brought. The statute provides for the purposes for which the court costs are to be spent.

Generally, domestic violence actions under Chapter 50B, such as requests for protective orders, are exempted from court costs. However, costs do apply to any and all additional and subsequent actions filed by amendment to an original action brought under Chapter 50 – unless the amendment itself is brought under Chapter 50B.

The question has arisen whether the costs should be applied to secondary actions brought not only by amendment but also those brought by counterclaim. An additional question has arisen about what it means for secondary actions to be "also brought under Chapter 50B". Reportedly some parties to 50B actions have attempted to file actions for divorce as a counterclaim to a 50B action, thereby seeking to avoid paying court costs for a divorce action, and courts have had varied responses depending upon their reading of the law.

BILL ANALYSIS: The bill does two clarifying things to the current treatment of 50B actions for court costs:

1. It clarifies that costs apply to secondary claims filed not only by amendment, but also by counterclaim.
2. It clarifies that secondary claims that are exempt from court costs are those limited to requests for relief authorized by 50B.

EFFECTIVE DATE: This act becomes effective October 1, 2010.

BACKGROUND: This bill was recommended by the Joint Legislative Committee on Domestic Violence.

**This summary was substantially prepared by William R. Gilkeson, Staff Attorney.*

HOUSE BILL 726: Clarify Expunctions

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 14, 2010
Introduced by:	Reps. Moore, Ross, Goodwin	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	H726-CSSA-74[v.5]		

SUMMARY: ***The Proposed Committee Substitute for House Bill 726 makes technical and conforming changes to statutes related to expunction of records and requires state and national criminal record checks when expunging records. The Proposed Committee substitute also requires sex offenders residing in this State to register as a sex offender for convictions obtained outside this State.***

BACKGROUND: During the 2009 Session, the General Assembly adopted S.L. 2009-510 (SB 262) and S.L. 2009-577 (HB 1329) which both dealt with expunction issues. The two bills were both ratified on August 11, 2009, but were not reconciled with each other, resulting in some inconsistencies in various expunction statutes.

Additionally, there was an error in the version of S.L. 2009-510 (SB262) that was adopted on the House floor. The House Finance Committee was the last committee to consider the bill before the floor, and that committee adopted a committee substitute. However, when the bill was considered on the House floor, the committee substitute that the House Judiciary II Committee had adopted was mistakenly considered and adopted by the House. This resulted in several additional corrections to the bill not being adopted by the House.

BILL ANALYSIS:

Corrections due to incorrect version of S.L. 2009-510 (SB 262) being adopted on the floor

The following portions of the bill make corrections that were adopted in the House Finance Committee, but were not included in the version presented to the House for adoption:

- In Section 8 of the PCS, the new subsection (b) language.
- Section 9 of the PCS

Remove affidavit requirement and add criminal background check for expunctions

Some expunction statutes currently require affidavits from the clerk of superior court, chief of police, and sheriff attesting that the applicant has no disqualifying convictions. This requirement remains from the years in which the clerk's office and local law enforcement were responsible for most criminal background checks. However, for several years now, the courts have required that expunction petitions be routed through the SBI for a criminal record check and the AOC for a search of the confidential expunction files. The changes in the following portions of the PCS would conform the statutes to the current process.

- Section 2
- Part of Section 3 on Page 3, lines 1-14
- Part of Section 4 on Page 4, lines 15-31
- Part of Section 5 on Page 5, line 37 through Page 6, line 2
- Part of Section 6 on Page 8, lines 29-44

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 726 DATE 6/15/10

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

COMMITTEE SUBSTITUTE ✓

Rep.) Stein
Sen.)

moves to amend the bill on page 3, line 22

( ) WHICH CHANGES THE TITLE

by deleting the phrase "10-year" and substituting the phrase "~~10-year~~ 15-year".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

MINUTES

June 17, 2010
Room 1027
Legislative Building

The Senate Judiciary I Committee met June 17, 2010 in Room 1027 of the Legislative Building. Chairman Martin Nesbitt presided, calling the meeting to order at 10:03 a.m.

In attendance with Chairman Nesbitt were Committee Vice Chairman Dan Clodfelter, Vice Chairman Pete Brunstetter, Vice Chairman R. C. Soles and Vice Chairman Josh Stein. Also present were members Senator Phil Berger, Senator Dan Blue, Senator Andrew Brock, Senator Harry Brown, Senator Margaret Dickson, Senator Malcolm Graham, Senator David Hoyle, Senator Clark Jenkins, Senator Ellie Kinnaird, Senator Richard Stevens and Senator Jerry Tillman. Staff present was Committee Counsel Erika Churchill, Giles Perry, Bill Patterson, Susan Sitze and Committee Assistant Jessica Kozma Proctor.

House Bill 80, a Bill to "Ban Electronic Sweepstakes," was the Committee's first order of business. A Proposed Committee Substitute (PCS) was distributed to members and adopted for discussion by a motion by Senator Stein. Prior to its adoption, Senator Berger requested a point of order and asked if it was germane for the Bill's substation.

The Bill is entitled: "Ban Electronic Sweepstakes: an act to ban the use of electronic machines and devices for sweepstakes purposes." The Bill makes if unlawful for any person to own, lease or have possession of, or operate and electronic machine or device. The Bill also makes it unlawful to "conduct a sweepstakes or engage in any process or activity associated with a sweepstakes." Electronic machine or device is defined in the Bill as "anything that uses energy and is capable of displaying information on a screen or other mechanism that can be viewed by a person to enter a sweepstakes or engage in any activity or process associated with the sweepstakes, including viewing information which would notify the person that the person is eligible, will receive or is entitled to receive a prize."

For a copy of the PCS relevant to the day's discussion please visit the following: http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H80v2.pdf

Chairman Nesbitt called on Senator Stein to discuss the PCS. Senator Stein asked to explain the "historical context." In North Carolina, more than 200 years ago gaming was outlawed, with the State banning video poker in 2000 and again in 2006. Currently, Senator Stein said, video poker businesses have opened across the State, primarily in low-income areas. Senator Stein added that he was "convinced that it violates state law," leaving the State in "legal limbo."

Senator Stein continued. Saying he wanted to make the legal banning of such places "crystal clear" to the State's courts; he said he had support from the State's North Carolina Sheriff's Association, the Family Policy Council, the North Carolina League of Municipalities and the Christian Action League. With roughly 600 such businesses operating throughout the State, such business are "causing devastation" and "wrecking havoc emotionally and financially" on families.

Chairman Nesbitt called on Committee Counsel Sitze to explain substantive changes to the Bill. She reviewed the PCS as linked previously in these minutes. Chairman Nesbitt then called upon comments from the gallery, recognizing Sheriff Earl Butler of Cumberland County.

Sheriff Butler began saying that this present concern regarding video gaming was not the first "time to fight this." He noted anecdotal cases in his county where residents have lost spouses, homes, businesses from participating in such gambling activity. He added that it is imperative for the State to stop video gaming for at least in part on behalf of law enforcement, noting that "policing" such places are difficult and that there "would be no stop to it" otherwise.

Chairman Nesbitt then recognized Representative Earl Jones, an operator of such business. "This is not a law enforcement issue; this is a revenue issue," the Representative said. He added that "we should not make public policy based on personal distaste." Representative Jones continued that the Bill would eliminate jobs, and that revenues from video gaming would impact "a lot of businesses."

Members from the industry applauded Representative Jones after speaking to the Committee. Chairman Nesbitt then called on Bill Brooks with the North Carolina Family Council. Mr. Brooks said that his organization had a "long-time standing opposition to gambling." He noted that video gaming placates the poor, and that "if the lottery is marijuana; video poker is crack cocaine."

Speaking against the Bill was Mr. Garrett Blackwelder, whom Chairman Nesbit called upon next. Mr. Blackwelder is the owner and operator of Figure Eight Technologies, a software company that specializes in video gaming. He discussed his business: 16 employees servicing 88 locations, locations that have a total of 636 employees and pay an average of $2,000 a month in rents.

Chairman Nesbitt then called on discussion by Committee members. Senator Hoyle asked if there were any federal statutes prohibiting the State from banning Internet

businesses. Senator Stein said that there was no law to prohibit such activity. Senator Berger asked if by definition of a gaming device would personal cell phones such as an iPhone be, at least accidentally, prohibited by the Bill. Ms. Sitze said they are not included in the Bill.

Senator Dickson commented that there currently was law addressing this in Virginia. Committee Counsel Churchill said "other states were facing the same scenario." Senator Stein added that Alabama already has a very similar law.

Chairman Nesbitt commented that is "seems like we're trying to put a stop to this since I came to the Senate." Senator Blue commented that the "whole question need to be well reasoned and thought out." Senator Blue then motioned for favorable report.

Vice Chairman Clodfelter asked if there was someone present from the North Carolina Education Lottery Commission. Chairman Nesbitt recognized Alice Garland, who commented that the external impact was difficult to gauge. Senator Clodfelter suggested that it might behoove her to investigate its impact.

Senator Brock asked to amend the Bill to also outlaw the lottery. After discussion, it was decided that such an amendment would be better received on the floor.

The motion for favorable report passed. Chairman Nesbitt adjourned the meeting at 10:58 a.m.

Senator Martin Nesbitt, Jr.
Chairman

Jessica Kozma Proctor
Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

MINUTES

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Room 1027
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Senator Martin Nesbitt, Jr.
Chairman

Jessica Kozma Proctor
Committee Clerk

AGENDA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

SENATOR MARTIN L. NESBITT, CHAIRMAN
Senator Pete Brunstetter, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman
Senator Josh Stein, Vice Chairman

Thursday, June 17, 2010
9 a.m.
Room 1027

1. **Call Meeting to Order.**

2. **Recognize members, staff, and guests.**

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
HB 80	Municipal District Elections 2011/Census.	Representative Goodwin
HB 666	Clarify Status of DWI Treatment Courts.	Representative Farmer-Butterfield Representative Alexander
SB 1243	DV Cases/Review Criminal Record.	Senator Graham

Adjournment.

Principal Clerk ____
Reading Clerk ____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

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

DAY	DATE	TIME	ROOM
Thursday	June 17, 2010	9:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 80	Municipal District Elections 2011/Census.	Representative Goodwin
HB 666	Clarify Status of DWI Treatment Courts.	Representative Farmer-Butterfield Representative Alexander
SB 1243	DV Cases/Review Criminal Record.	Senator Graham

Senator Martin L. Nesbitt, Jr., Chair

HOUSE BILL 80:
Ban Electronic Sweepstakes

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 16, 2010
Introduced by:	Rep. Goodwin	**Prepared by:**	Susan Sitze
Analysis of:	Second Edition H80-PCS30528-ST-91		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 80 would ban the use of electronic machines and devices for sweepstakes purposes.***

[As introduced, this bill was identical to S38, as introduced by Sen. Clodfelter, which is currently in Unknown.]

BILL ANALYSIS:

Section 1 of the proposed committee substitute creates a new G.S. 14-306.4 to prohibit electronic machines and devices for sweepstakes.

Subsection (a) defines the terms "electronic machine or device", "enter or entry", "prize", and "sweepstakes".

Subsection (b) makes it unlawful for an electronic machine or device to be owned, leased, or possessed and operated or allowed to be operated to conduct a sweepstakes or to engage in any process or activity associated with a sweepstakes, unless is specifically authorized in subsection (c).

Subsection (c) provides that is shall **not** be unlawful to use an electronic machine or device:

- That are video games, pinball machines, etc. that do not provide any kind of prize, as defined in G.S. 14-306(b)(1).
- If it is being used only by the person conducting a sweepstakes and is used for accepting entry information, creating an informational website, maintaining sweepstakes records, or operational software for a sweepstakes that meets all the criteria provided in sub-subdivisions (4)b. through (4)h. (see below)
- If it is used to notify an entrant that the entrant has won a prize in a sweepstakes that meets all the criteria provided in sub-subdivisions (4)b. through (4)h. (see below)
- To conduct a sweepstakes that satisfies all of the following criteria:
    - (4)a. The entry is conducted by either:
        - Using a customer reward card
        - Electronically transmitting identifying information
    - (4)b. There is no entertaining display or reveal of a prize
    - (4)c. Entrants are not allowed to subdivide an entry or substitute or subdivide a prize
    - (4)d. Notification of a prize is by mail, email, text, or phone on a date later than the date of entry
    - (4)e. Entrants are not notified of any prize awarded at the time or place of entry

- (4)f. The sweepstakes is open for a minimum of 7 calendar days and prizes are determined by a random drawing conducted after this time.
- (4)g. A list of all sweepstakes prizes and prize winners from the previous 12 months is available upon request.
- (4)h. There is a free method of entry into the sweepstakes.

Subsection (d) states that it is the intent of G.S. 14-306.4 to prohibit any electronic machine or device or other mechanism that seeks to avoid application of this section through the use of any subterfuge or pretense. It is also the intent to allow a person to provide identifying information to enter a sweepstakes and to allow a person conducting a sweepstakes to notify an entrant of the status or outcome.

Subsection (e) provides that G.S. 14-306.4 does not make any of the following illegal:

- Any activity lawfully conducted on Indian lands pursuant to a Tribal-State Gaming Compact.
- Any lottery game allowed by Chapter 18C.
- Any raffle or bingo game allowed by Part 2 of Chapter 14.

Subsection (f) provides that each violation of this section shall be considered a separate offense.

Subsection (g) provides the following penalties for violation:

- First offense – Class 1 misdemeanor
- Second offense – Class H felony
- Third or subsequent offense – Class G felony

Subsection (h) authorizes the seizure and disposal, pursuant to G.S. 15-11.1, of electronic machines or devices used in violation of the statute.

Section 2 amends the definition of slot machine in G.S. 14-306(a) to include a token, credit card, debit card, prepaid card, or any other method that requires payment to activate play as forms of payment in the definition.

Section 3 amends the definition of video gaming machine in G.S. 14-306.1A(b) to include a prepaid card as a form of payment. .

EFFECTIVE DATE: This act becomes effective December 1, 2010, and applies to offenses committed on or after that date.

BACKGROUND: In *American Treasures v. State,* 173 N.C. App. 170 (2005), the North Carolina Court of Appeals addressed whether a free promotional game piece attached to a prepaid phone card with which a consumer could win a prize constituted an illegal lottery or form of gambling. Customers could also participate in the game without purchasing a phone card by sending a written request to the Plaintiff, Treasured Arts, Inc. Applying Article 37 of Chapter 14, the Court of Appeals found that "where, in order to secure a chance to something of greater value, [a person] purchases a token for small consideration or a trivial piece or pays more that the value of the item, the transaction is prohibited." The Court of Appeals upheld the trial court's entry of declaratory judgment in favor of the Plaintiff. According to the Court, the phone card had sufficient value to support the conclusion that the consumer was purchasing the card to obtain lower long distance rates, not to enter and win prizes in the promotional game. Moreover, consumers could enter the game free of charge upon request.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 80
Committee Substitute Favorable 3/19/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H80-PCS30528-ST-91

Short Title: Ban Electronic Sweepstakes. (Public)

Sponsors:

Referred to:

February 9, 2009

A BILL TO BE ENTITLED

AN ACT TO BAN THE USE OF ELECTRONIC MACHINES AND DEVICES FOR SWEEPSTAKES PURPOSES.

The General Assembly of North Carolina enacts:

Whereas, the 1791 General Assembly determined that "all public gaming-tables are destructive of the morality of the inhabitants of this State, and tend greatly to the encouragement of vice and dissipation" (Law of 1791, Chapter 5); and

Whereas, the State of North Carolina has continuously prohibited public gaming in North Carolina since 1791; and

Whereas, the State of North Carolina specifically prohibited the use of slot machines in 1937; and

Whereas, the State of North Carolina specifically prohibited the use of video poker machines in 2000 and again in 2006; and

Whereas, the State of North Carolina has previously determined that such purpose should be carried out to prevent the operation of bingo by professionals for profit, prevent commercialized gambling, prevent the disguise of bingo and other game forms or promotional schemes, and prevent participation by criminal and other undesirable elements; and

Whereas, any federally recognized Indian tribe may conduct such video poker games in accordance with an approved Class III Tribal-State Gaming Compact applicable to that tribe as provided in G.S. 147-12(14) and G.S. 71A-8; and

Whereas, the State of North Carolina has previously determined that no video poker machine may be utilized for play under Chapter 18C of the General Statutes; and

Whereas, since 2006, companies have developed electronic machines and devices to gamble through pretextual sweepstakes relationships with Internet service, telephone cards, and office supplies, among other products; and

Whereas, companies using electronic machines and devices for sweepstakes have sought, and received, declaratory relief from the courts; and

Whereas, such electronic sweepstakes systems utilizing video poker machines and other similar simulated game play create the same encouragement of vice and dissipation as other forms of gambling, in particular video poker by encouraging repeated play, even when allegedly used as a marketing technique; and

"Whereas, it hath appeared to this General Assembly that the before recited acts hath not that good effect which was intended" (Laws of 1799, Chapter 12); Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 37 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-306.4. Electronic machines and devices for sweepstakes prohibited.**

(a) Definitions. – For the purposes of this section, the following definitions apply:

(1) "Electronic machine or device" means anything that uses energy and is capable of displaying information on a screen or other mechanism that can be viewed by a person in order to (i) enter a sweepstakes, or (ii) engage in any activity or process associated with the sweepstakes, including viewing information which would notify the person that the person is eligible, will receive, or is entitled to receive a prize. This section is applicable to an electronic machine or device whether or not:

a. It is server-based.

b. It uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries.

c. It utilizes software such that the simulated game influences or determines the winning or value of the prize.

d. It selects prizes from a predetermined finite pool of entries.

e. It utilizes a mechanism that reveals the content of a predetermined sweepstakes entry.

f. It predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed.

g. It utilizes software to create a game result.

h. It requires deposit of any coin or token or use of any credit card, debit card, or other method of payment to activate the machine or device.

i. It requires purchase of a related product or prepaid card.

j. The related product, if any, has legitimate value.

k. It reveals the prize incrementally, even though it may not influence if a prize is awarded or the value of any prize awarded.

l. It determines and associates the prize with an entry or entries at the time the sweepstakes is entered.

(2) "Enter" or "entry" means the act or process by which a person becomes eligible to receive any prize offered in a sweepstakes.

(3) "Prize" means any gift, award, gratuity, good, service, or anything else of value, which may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.

(4) "Sweepstakes" means any game, advertising scheme or plan, or other promotion, which, with or without payment of any consideration, a person may enter to win or become eligible to receive any prize, the determination of which is based upon chance.

(b) It shall be unlawful for any person to own, lease, or have possession of and operate an electronic machine or device; or to allow to be operated an electronic machine or device; or to own, lease, or have possession of and place into operation an electronic machine or device to conduct a sweepstakes or to engage in any process or activity associated with a sweepstakes, unless specifically authorized in subsection (c) of this section.

(c) Notwithstanding subsection (b) of this section, it shall not be unlawful to use an electronic machine or device:

(1) That is within the scope of the exclusion provided in G.S. 14-306(b)(1).

(2) When the electronic machine or device is used only by the person conducting the sweepstakes and is used for the purpose of accepting an entrant's identifying information, creating a Web site to provide information about a sweepstakes being conducted, maintaining records of sweepstakes entries, or the operation of software necessary to conduct the sweepstakes that complies with all of the provisions of sub-subdivisions (4)b. through (4)h. of this subsection.

(3) For the purpose of notifying an entrant in a sweepstakes that the entrant has received, or is eligible to receive, a prize, provided the sweepstakes complies with all of the provisions of sub-subdivisions (4)b. through (4)h. of this subsection.

(4) To conduct a sweepstakes that satisfies all of the following criteria:

a. Entry is conducted in one of the following ways:

1. Using a customer reward card at a cash register capable of calculating sales and use tax required to be collected under G.S. 105-164.4 in conjunction with the purchase of a good or service, by either the cashier or entrant electronically scanning the customer reward card or the cashier or entrant entering the phone number associated with the customer reward card.

2. By electronically transmitting a person's identifying information.

b. There is no entertaining display or reveal of a prize associated with an entry.

c. The person conducting the sweepstakes shall not allow any entrant to subdivide an entry into multiple entries or to substitute or subdivide a prize awarded in the sweepstakes.

d. The entrant is notified of any prize awarded in the sweepstakes by mail, e-mail, text, or phone on a date later than the date of entry.

e. The entrant is not notified of any prize awarded in the sweepstakes at the time or place of entry.

f. The sweepstakes is open for a minimum of seven calendar days and prizes are determined by a random drawing of entries conducted after this time period.

g. The person conducting the sweepstakes makes available upon request a list of all sweepstakes prizes and prize winners from the previous 12 months.

h. The person conducting the sweepstakes provides a free method of entry into the sweepstakes.

(d) It is the intent of this section to prohibit any electronic machine or device or other mechanism that seeks to avoid application of this section through the use of any subterfuge or pretense whatsoever. It is the intent of this section to allow a person to provide the person's name, address, phone number, or other identifying information to enter a sweepstakes, either singularly or in connection with filling out a survey form, and to allow a person conducting a sweepstakes to notify an entrant of the status or outcome of any sweepstakes.

(e) Nothing in this section shall be construed to make illegal any of the following:

(1) Any activity which is lawfully conducted on Indian lands pursuant to, and in accordance with, an approved Tribal-State Gaming Compact applicable to that Tribe as provided in G.S. 147-12(14) and G.S. 71A-8.

(2) Any lottery game lawfully conducted in accordance with Chapter 18C of the General Statutes.

(3) Any raffle or bingo game lawfully conducted in accordance with Part 2 of this Article.

(f) Each violation of this section shall be considered a separate offense.

(g) Any person who violates this section is guilty of a Class 1 misdemeanor for the first offense and is guilty of a Class H felony for a second offense and a Class G felony for a third or subsequent offense.

(h) Any electronic machine or device, or other property, used in violation of this section shall be seized and disposed of according to G.S. 15-11.1."

SECTION 2. G.S. 14-306(a) reads as rewritten:

"(a) Any machine, apparatus or device is a slot machine or device within the provisions of G.S. 14-296 through 14-309, if it is one that is adapted, or may be readily converted into one that is adapted, for use in such a way that, as a result of the insertion of any piece of money or coin or token; ~~other object,~~ any credit card, debit card, or any other method that requires payment to activate play; or any prepaid card, such machine or device is caused to operate or may be operated in such manner that the user may receive or become entitled to receive any piece of money, credit, allowance or thing of value, or any check, slug, token or memorandum, whether of value or otherwise, or which may be exchanged for any money, credit, allowance or any thing of value, or which may be given in trade, or the user may secure additional chances or rights to use such machine, apparatus or device; or any other machine or device designed and manufactured primarily for use in connection with gambling and which machine or device is classified by the United States as requiring a federal gaming device tax stamp under applicable provisions of the Internal Revenue Code. This definition is intended to embrace all slot machines and similar devices except slot machines in which is kept any article to be purchased by depositing any coin or thing of value, and for which may be had any article of merchandise which makes the same return or returns of equal value each and every time it is operated, or any machine wherein may be seen any pictures or heard any music by depositing therein any coin or thing of value, or any slot weighing machine or any machine for making stencils by the use of contrivances operated by depositing in the machine any coin or thing of value, or any lock operated by slot wherein money or thing of value is to be deposited, where such slot machines make the same return or returns of equal value each and every time the same is operated and does not at any time it is operated offer the user or operator any additional money, credit, allowance, or thing of value, or check, slug, token or memorandum, whether of value or otherwise, which may be exchanged for money, credit, allowance or thing of value or which may be given in trade or by which the user may secure additional chances or rights to use such machine, apparatus, or device, or in the playing of which the operator does not have a chance to make varying scores or tallies."

SECTION 3. G.S. 14-306.1A(b) reads as rewritten:

"(b) Definitions. – As used in this section, a video gaming machine means a slot machine as defined in G.S. 14-306(a) and other forms of electrical, mechanical, or computer games such as, by way of illustration:

(1) A video poker game or any other kind of video playing card game.
(2) A video bingo game.
(3) A video craps game.
(4) A video keno game.
(5) A video lotto game.
(6) Eight liner.
(7) Pot-of-gold.
(8) A video game based on or involving the random or chance matching of different pictures, words, numbers, or symbols not dependent on the skill or dexterity of the player.

Sen. Stein

- Chief Lopez (Durham)
  Running Late — Not Here

- Kelli Kukura of League of Music. CAN speak

HOUSE BILL 80:
Ban Electronic Sweepstakes

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 17, 2010
Introduced by:	Rep. Goodwin	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	Second Edition H80-PCS30528-ST-91		

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Subsection (b) makes it unlawful for an electronic machine or device to be owned, leased, or possessed and operated or allowed to be operated to conduct a sweepstakes or to engage in any process or activity associated with a sweepstakes, unless is specifically authorized in subsection (c).

Subsection (c) provides that is shall **not** be unlawful to use an electronic machine or device:

- That are video games, pinball machines, etc. that do not provide any kind of prize, as defined in G.S. 14-306(b)(1).
- If it is being used only by the person conducting a sweepstakes and is used for accepting entry information, creating an informational website, maintaining sweepstakes records, or operational software for a sweepstakes that meets all the criteria provided in sub-subdivisions (4)b. through (4)h. (see below)
- If it is used to notify an entrant that the entrant has won a prize in a sweepstakes that meets all the criteria provided in sub-subdivisions (4)b. through (4)h. (see below)
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Section 3 amends the definition of video gaming machine in G.S. 14-306.1A(b) to clarify that a prepaid card is a form of payment included in the definition.

EFFECTIVE DATE: This act becomes effective December 1, 2010, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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Committee Substitute Favorable 3/19/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H80-PCS30528-ST-91

Short Title: Ban Electronic Sweepstakes. (Public)

Sponsors:

Referred to:

February 9, 2009

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Whereas, the State of North Carolina has previously determined that such purpose should be carried out to prevent the operation of bingo by professionals for profit, prevent commercialized gambling, prevent the disguise of bingo and other game forms or promotional schemes, and prevent participation by criminal and other undesirable elements; and

Whereas, any federally recognized Indian tribe may conduct such video poker games in accordance with an approved Class III Tribal-State Gaming Compact applicable to that tribe as provided in G.S. 147-12(14) and G.S. 71A-8; and

Whereas, the State of North Carolina has previously determined that no video poker machine may be utilized for play under Chapter 18C of the General Statutes; and

Whereas, since 2006, companies have developed electronic machines and devices to gamble through pretextual sweepstakes relationships with Internet service, telephone cards, and office supplies, among other products; and

Whereas, companies using electronic machines and devices for sweepstakes have sought, and received, declaratory relief from the courts; and

Whereas, such electronic sweepstakes systems utilizing video poker machines and other similar simulated game play create the same encouragement of vice and dissipation as other forms of gambling, in particular video poker by encouraging repeated play, even when allegedly used as a marketing technique; and

"Whereas, it hath appeared to this General Assembly that the before recited acts hath not that good effect which was intended" (Laws of 1799, Chapter 12); Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 37 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-306.4. Electronic machines and devices for sweepstakes prohibited.**

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a. It is server-based.

b. It uses a simulated game terminal as a representation of the prizes associated with the results of the sweepstakes entries.

c. It utilizes software such that the simulated game influences or determines the winning or value of the prize.

d. It selects prizes from a predetermined finite pool of entries.

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f. It predetermines the prize results and stores those results for delivery at the time the sweepstakes entry results are revealed.

g. It utilizes software to create a game result.

h. It requires deposit of any coin or token or use of any credit card, debit card, or other method of payment to activate the machine or device.

i. It requires purchase of a related product or prepaid card.

j. The related product, if any, has legitimate value.

k. It reveals the prize incrementally, even though it may not influence if a prize is awarded or the value of any prize awarded.

l. It determines and associates the prize with an entry or entries at the time the sweepstakes is entered.

(2) "Enter" or "entry" means the act or process by which a person becomes eligible to receive any prize offered in a sweepstakes.

(3) "Prize" means any gift, award, gratuity, good, service, or anything else of value, which may be transferred to a person, whether possession of the prize is actually transferred, or placed on an account or other record as evidence of the intent to transfer the prize.

(4) "Sweepstakes" means any game, advertising scheme or plan, or other promotion, which, with or without payment of any consideration, a person may enter to win or become eligible to receive any prize, the determination of which is based upon chance.

(b) It shall be unlawful for any person to own, lease, or have possession of and operate an electronic machine or device; or to allow to be operated an electronic machine or device; or to own, lease, or have possession of and place into operation an electronic machine or device to conduct a sweepstakes or to engage in any process or activity associated with a sweepstakes, unless specifically authorized in subsection (c) of this section.

(c) Notwithstanding subsection (b) of this section, it shall not be unlawful to use an electronic machine or device:

(1) That is within the scope of the exclusion provided in G.S. 14-306(b)(1).

(2) When the electronic machine or device is used only by the person conducting the sweepstakes and is used for the purpose of accepting an entrant's identifying information, creating a Web site to provide information about a sweepstakes being conducted, maintaining records of sweepstakes entries, or the operation of software necessary to conduct the sweepstakes that complies with all of the provisions of sub-subdivisions (4)b. through (4)h. of this subsection.

(3) For the purpose of notifying an entrant in a sweepstakes that the entrant has received, or is eligible to receive, a prize, provided the sweepstakes complies with all of the provisions of sub-subdivisions (4)b. through (4)h. of this subsection.

(4) To conduct a sweepstakes that satisfies all of the following criteria:

a. Entry is conducted in one of the following ways:

1. Using a customer reward card at a cash register capable of calculating sales and use tax required to be collected under G.S. 105-164.4 in conjunction with the purchase of a good or service, by either the cashier or entrant electronically scanning the customer reward card or the cashier or entrant entering the phone number associated with the customer reward card.

2. By electronically transmitting a person's identifying information.

b. There is no entertaining display or reveal of a prize associated with an entry.

c. The person conducting the sweepstakes shall not allow any entrant to subdivide an entry into multiple entries or to substitute or subdivide a prize awarded in the sweepstakes.

d. The entrant is notified of any prize awarded in the sweepstakes by mail, e-mail, text, or phone on a date later than the date of entry.

e. The entrant is not notified of any prize awarded in the sweepstakes at the time or place of entry.

f. The sweepstakes is open for a minimum of seven calendar days and prizes are determined by a random drawing of entries conducted after this time period.

g. The person conducting the sweepstakes makes available upon request a list of all sweepstakes prizes and prize winners from the previous 12 months.

h. The person conducting the sweepstakes provides a free method of entry into the sweepstakes.

(d) It is the intent of this section to prohibit any electronic machine or device or other mechanism that seeks to avoid application of this section through the use of any subterfuge or pretense whatsoever. It is the intent of this section to allow a person to provide the person's name, address, phone number, or other identifying information to enter a sweepstakes, either singularly or in connection with filling out a survey form, and to allow a person conducting a sweepstakes to notify an entrant of the status or outcome of any sweepstakes.

(e) Nothing in this section shall be construed to make illegal any of the following:

(1) Any activity which is lawfully conducted on Indian lands pursuant to, and in accordance with, an approved Tribal-State Gaming Compact applicable to that Tribe as provided in G.S. 147-12(14) and G.S. 71A-8.

(2) Any lottery game lawfully conducted in accordance with Chapter 18C of the General Statutes.

(3) Any raffle or bingo game lawfully conducted in accordance with Part 2 of this Article.

(f) Each violation of this section shall be considered a separate offense.

(g) Any person who violates this section is guilty of a Class 1 misdemeanor for the first offense and is guilty of a Class H felony for a second offense and a Class G felony for a third or subsequent offense.

(h) Any electronic machine or device, or other property, used in violation of this section shall be seized and disposed of according to G.S. 15-11.1."

SECTION 2. G.S. 14-306(a) reads as rewritten:

"(a) Any machine, apparatus or device is a slot machine or device within the provisions of G.S. 14-296 through 14-309, if it is one that is adapted, or may be readily converted into one that is adapted, for use in such a way that, as a result of the insertion of any piece of money or coin or token; ~~other object,~~ any credit card, debit card, or any other method that requires payment to activate play; or any prepaid card, such machine or device is caused to operate or may be operated in such manner that the user may receive or become entitled to receive any piece of money, credit, allowance or thing of value, or any check, slug, token or memorandum, whether of value or otherwise, or which may be exchanged for any money, credit, allowance or any thing of value, or which may be given in trade, or the user may secure additional chances or rights to use such machine, apparatus or device; or any other machine or device designed and manufactured primarily for use in connection with gambling and which machine or device is classified by the United States as requiring a federal gaming device tax stamp under applicable provisions of the Internal Revenue Code. This definition is intended to embrace all slot machines and similar devices except slot machines in which is kept any article to be purchased by depositing any coin or thing of value, and for which may be had any article of merchandise which makes the same return or returns of equal value each and every time it is operated, or any machine wherein may be seen any pictures or heard any music by depositing therein any coin or thing of value, or any slot weighing machine or any machine for making stencils by the use of contrivances operated by depositing in the machine any coin or thing of value, or any lock operated by slot wherein money or thing of value is to be deposited, where such slot machines make the same return or returns of equal value each and every time the same is operated and does not at any time it is operated offer the user or operator any additional money, credit, allowance, or thing of value, or check, slug, token or memorandum, whether of value or otherwise, which may be exchanged for money, credit, allowance or thing of value or which may be given in trade or by which the user may secure additional chances or rights to use such machine, apparatus, or device, or in the playing of which the operator does not have a chance to make varying scores or tallies."

SECTION 3. G.S. 14-306.1A(b) reads as rewritten:

"(b) Definitions. – As used in this section, a video gaming machine means a slot machine as defined in G.S. 14-306(a) and other forms of electrical, mechanical, or computer games such as, by way of illustration:

(1) A video poker game or any other kind of video playing card game.
(2) A video bingo game.
(3) A video craps game.
(4) A video keno game.
(5) A video lotto game.
(6) Eight liner.
(7) Pot-of-gold.
(8) A video game based on or involving the random or chance matching of different pictures, words, numbers, or symbols not dependent on the skill or dexterity of the player.

For the purpose of this section, a video gaming machine is a video machine which requires deposit of any coin or token, or use of any credit card, debit card, or any other method that requires ~~payment~~ payment, or any prepaid card to activate play of any of the games listed in this subsection.

For the purpose of this section, a video gaming machine includes those that are within the scope of the exclusion provided in G.S. 14-306(b)(2) unless conducted in accordance with an approved Class III Tribal-State Compact applicable to that tribe as provided in G.S. 147-12(14) and G.S. 71A-8. For the purpose of this section, a video gaming machine does not include those that are within the scope of the exclusion provided in G.S. 14-306(b)(1)."

SECTION 4. This act becomes effective December 1, 2010, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 80 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.) Brock
(Sen.)

moves to amend the bill on page 5, line s 9-10

( ) WHICH CHANGES THE TITLE

by inserting the following between those lines:

"SECTION 3.5(a) Chapter 18C of the General Statutes ~~is~~ is repealed."

SECTION 3.5(b) G.S. 115C-546.2(d) is repealed.

SECTION 3.5(c) Article 35A of Chapter 115C of the General Statutes is repealed.

SECTION 3.5(d) Monies held in the Lottery Fund, Education Lottery Fund, Public School Building Fund in accordance with G.S. 18C-164(c)(2), the State Educational Assistance Authority in accordance with G.S. 18C-164(c)(3) shall be transferred to the Public School Construction Fund for distribution in accordance with G.S. 115C-546.2".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 2

SENATE BILL 1243*
Corrected Copy 5/21/10

Short Title:	DV Cases/Review Criminal Record.	(Public)
Sponsors:	Senators Graham; Atwater, Berger of Franklin, Blake, Boseman, Davis, Dorsett, East, Goodall, Jacumin, Jones, Purcell, Snow, Vaughan, and Walters.	
Referred to:	Judiciary I.	

May 20, 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.

To whom it may concern,

My name is Julian Fritz. I am a graphic designer for Figure 8 Technologies; a software provider for many of the Sweepstakes businesses in NC. I must admit, when I was first introduced to this business, I was skeptical about many aspects of it, including its potential success, long term future, and social reputation in communities. Being that it was something that I was unfamiliar with--I was cautious. I believe that most people feel this way when facing something new--or facing change. We are naturally afraid of the things that we do not know. How wrong I was.

I have to say that after being involved and employed in this business, I have never met a nicer, friendlier group of people than the people I have met working for and in this industry. The sweepstakes community in NC has created thousands of jobs, and has helped hundreds of people realize the American dream through small business ownership, all the while, doing it in the worst economic times of all of our lives. In this recession, this is a thriving business. The success of these individual businesses is exactly what we need for economic recovery. Shutting them down would be like kicking our economy while it is down. It would be catastrophic.

The day that this business is outlawed, you will have thousands of people, literally, filing for unemployment. Not to mention, it will be taking millions upon millions of dollars from our local economy. These businesses offer multiple services in their communities, and provide millions of dollars in tax revenue through regular business activity and employment. There are literally hundreds of thousands of regular customers. All of this is happening voluntarily and at the will of the people. The potential future tax revenue available through regulation would be hard to comprehend as there are hundreds of these business throughout this state--employing thousands of everyday people, like me--who without it, would be out of a job.

I am just one person who would be out of a job. One of thousands who would turn to living off of the state instead of providing for it. This job pays my bills. It allows me to pay my mortgage, buy my groceries, take my daughter to the movies. I don't have much--but I earn what I make right now. I work for it--and we all do. Please don't take our lively-hood away. Mine and my families lives depend on it. And so thousands of families across the state. You can make all of us sleep a little easier knowing that our lives make a difference, and that we have people in office that care about us and our needs. Please do what is right, and save all of us from falling into becoming a statistic of unemployment and poverty. Use this business instead to help pull us up from the strains of this recession. Today we need your support--so that tomorrow we do not need your money.

Thank you for considering my family and lively-hood.

PAGES ATTENDING

Date: 6-17

Committee: Judiciary I **Room:** 1027LB 9AM

PLEASE PRINT LEGIBILY!!!!!

	Page Name	Hometown	Sponsoring Senator
1	William Bass	Nashville	Swindell
2	Laurel Keefer	Raleigh	P. Berger
3	Katie Honaker	Raleigh	P. Berger
4	[illegible]	[illegible]	[illegible]
5	[illegible]	[illegible]	[illegible]
6	Tegan George	Raleigh	Hunt
7	Harrison Wicker	Sanford	Atwater
8	Zachery Thomas	Garner	Blue
9	Madison Gibbs	Greensboro	Dorsett

Do not add additional names below the grid.

Pages: Please present this form to either the Committee Clerk at the meeting or a Sgt. at Arms.

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 17, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Rex Dunn	Conf of DAs
Jonathan Lee	J Warren Pfizer
A Sillari	DST
John deRosset	Christian Action League
Carroll Blackwelder	Sweepstakes
Julian Fritz	Figure 8 technologies
Michael Fortson	Figure 8 Technologies
Matt Farrell	TPG
Chris Brooks	DOJ/DMV

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 17, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
G.A. Vincent	Metro Chiefs Assoc.
Jeff Allsbrook	Metro Chiefs Assn.
Tim Smith	Fig 8
Bridget Medlin	Fig 8 Internet Sweepstakes
Jon Paton	Fig 8 Internet Sweepstakes

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 17, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Taylor	Kocharek Law Group
Penny Hulsey	School of Gov.
Gaston Payne	MWC
Matthew Durand	
Brian Dempsey	MWC
Katie Hallaway	Lowe's Companies, Inc.
Allison Calder	Pavlatics

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 17, 2010 ~~10 a.m.~~ 9 Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Doris Weaver	CWA
Tom Coley	CWA
Leslie Merritt	FEPS
Gary W Jones	NCCPG
K. Kuliana	NCLM
[illegible]	Courtesy
Sheriff Sam Page	Rockingham Co Sheriffs' Off'ce
Paul Hinson	Cumberland Co Sheriffs Office
Earl Butler	Cumberland Co Sheriff Office
Paul Stock	NCDA
Jim Blackburn	Association of County Commissioners

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 17, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Ken McMahon	K.M.A.
Tommy Taylor	MWC
Alice Garland	NCEL
Brittany Farrell	NCFPC
John Poland	NCAPA
Ronnie Williams	Town of Garner
Dorrian Horsey	NCFPC
Patrick Bobbitt	NCAEC
Eddie Madden	Town of Elizabethtown
Chick Kamoski	Town of Pitt

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 17, 2010 ~~10~~ 9 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Ray Rapp	N.C. House
Eddie Caldwell	NC Sheriffs' Assn.
Sheriff Knight	NC Sheriffs Assoc.
Anna Stein	citizen
Emily Welborne	The Policy Group
Elizabeth Robinson	NCRMA
Andy Ellen	NCRMA
Amy McConkey	NC Beverage Assoc
Butch Gunnells	" " "
Becky Gray	John Locke Foundation
Nick Tosco	NCLM

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 17, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Tammy Smith	NC AOC
Bill Rowe	NC Justice Center
RJ Jackson	Figure 8 Technologies
Josh Harris	Citizen
Cameron Hunley	Electricities of NC
[illegible]	NWN
[illegible]	Mcm
[illegible]	[illegible]
[illegible]	Smith Moore Leatherwood

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

MINUTES

June 22, 2010
Room 1027
Legislative Building
10a.m.

The Senate Judiciary I Committee met June 22, 2010 in Room 1027 of the Legislative Building. Committee Chairman Martin Nesbitt presided, calling the meeting to order at 10:04 a.m.

This is the first of two meetings recorded in this set of minutes on the day of June 22, 2010.

In attendance with Chairman Nesbitt were Committee Vice Chairman Dan Clodfelter, Vice Chairman Pete Brunstetter, Vice Chairman R. C. Soles and Vice Chairman Josh Stein. Also present were members Senator Charlie Albertson, Senator Phil Berger, Senator Dan Blue, Senator Andrew Brock, Senator Harry Brown, Senator Malcolm Graham, Senator David Hoyle, Senator Clark Jenkins, Senator Ellie Kinnaird, Senator Floyd McKissick, Senator Richard Stevens and Senator Jerry Tillman. Staff present was Committee Counsel Erika Churchill, Giles Perry, Bill Patterson and Committee Assistant Jessica Kozma Proctor.

House Bill 961

Chairman Nesbitt opened the day's meeting to discuss House Bill 961, at that point entitled "Gov't Ethics and Campaign Reform Act of 2010." A Proposed Committee Substitute was distributed to members. Senator Stein motioned to adopt the PCS for discussion; the motion carried with only one nay vote.

Chairman Nesbitt recognized Senator Goss to explained changes to the PCS. A copy of this edition of the Bill may be found at http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H961v4.pdf.

This Senate PCS deletes provisions of the Third Edition and replaces its long title with: "AN ACT TO STRENGTHEN PUBLIC CONFIDENCE IN THE ELECTION PROCESS FOR COUNCIL OF STATE OFFICES THAT REGULATE INDIVIDUALS AND BUSINESSES IN THIS STATE; TO PROVIDE LIMITS ON THE TRADING OF INFLUENCE OR POSITION FOR GAIN; TO

INCREASE THE PUNISHMENT FOR MAKING CAMPAIGN CONTRIBUTIONS IN THE NAME OF ANOTHER; TO INCREASE ACCESSIBILITY TO INFORMATION RELATED TO CANDIDATE CAMPAIGN COMMITTEES; TO STRENGTHEN PUBLIC CONFIDENCE IN GOVERNMENT BY INCREASING THE REVOLVING DOOR PERIOD AND APPLICABILITY; TO STRENGTHEN TRANSPARENCY OF GOVERNMENT THROUGH ADDITIONAL DISCLOSURES BY PUBLIC SERVANTS; TO INCREASE ACCOUNTABILITY OF PUBLIC SERVANTS, APPOINTEES OF THE GOVERNOR, AND STATE EMPLOYEES BY PERMITTING THE GOVERNOR TO ADOPT MINIMUM STANDARDS OF ETHICAL CONDUCT; TO STRENGTHEN TRANSPARENCY OF GOVERNMENT THROUGH INCREASING ACCESSIBILITY TO PUBLIC RECORDS; TO MAKE TECHNICAL CHANGES; AND TO MAKE OTHER CHANGES."

Having been recognized by Chairman Nesbitt, Senator Goss thanked those who worked on House Bill 961, noting that there was "a tremendous amount of time devoted" to the Bill. Senator Goss offered a separate thank you to Senator Clodfelter for his contributions to the Bill.

Senator Goss continued. "It's hard to legislate morality, but we can legislate behavior," he said. He added that there were a lot of things in the bill that "will resonate" in the future. Chairman Nesbitt added that "this is a good government bill," saying that it covered campaign finance issues, lobbying activities and other records. The Chairman then called on Committee Counsel Erika Churchill to explain the PCS.

Ms. Churchill reviewed sections of the bill. Please note the following below as a description of the Bill's provisions as well as changes in the current edition:

"The Voter-Owned Elections Act. Amends GS 163-278.95 to make the Voter-Owned Elections Fund (Fund) available to candidates for the Council of State offices of Secretary of State and Treasurer, and Commissioner of Agriculture and Commissioner of Labor, in elections to be held in 2012 and thereafter, and to candidates for the office of Attorney General in elections held in 2016 and thereafter. Currently, the Fund is available to candidates for the offices of Auditor, Superintendent of Public Instruction, and Commissioner of Insurance. Clarifies that the purpose of the Voter-Owned Elections Act is to ensure fair elections for elected offices that implement and provide oversight on the regulation or investigation of individuals, businesses, or government in North Carolina, and to minimize corruption and its appearance within those offices. Amends definitions in GS 163-278.96 to provide that a write-in candidate authorized under GS 163-123 is not eligible to become a certified candidate. Amends *maximum qualifying contributions* to mean (1) $100 times the minimum number of registered voters required to make a qualifying contribution under GS 163-278.98(b) (support of candidacy) (was, 100 times the filing fee) for the office sought if the candidate has no primary (was, an uncontested primary) and (2) $200 times the minimum number of registered voters required to make a qualifying contribution (was, 200 times the filing fee) for the office sought. Amends *qualifying contribution* to mean a contribution between $10 and $200 in the form prescribed for noncash monetary contributions in GS 163-278.14(b) (was, in the form of check or money order) that is made by an individual who is a registered voter in this state at the time the report under GS 163.278.98(c) (relating to record of qualifying contributions by a participating candidate) is submitted (was, made by any registered

voter in the state), and that also fulfills the retained requirement. Makes other conforming changes. Effective October 1, 2010.

"Source of Funding. Increases by $5 various fees or establishes a new fee in the following statutes and directs that $5 or other designated amount be paid into the Fund, or directs that $5 from a current fee be paid into the Fund: GS 55A-1-22 ($5 from fees for non-profit organizations filing with the NC Secretary of State); GS 57C-1-22 ($5 from fees for limited liability companies filing with the NC Secretary of State); GS 58-33-125(c) ($5 from fees applicable to agents, brokers, limited representatives, adjusters, motor vehicle damage appraisers, and surplus lines providers); GS 78A-37(b) ($5 from fees applicable to dealers and salesmen); GS 95-110.5(20) and GS 95-69.11(11) ($5 from certain fees established by Commissioner of Labor); *new* GS 106-22(18) (directs the Board or Commissioner of Agriculture, where either is lessor, to pay 5% of every rental agreement to the Fund); and *new* GS 147-69.2(e) (charges .02% on each fund held by the State Treasurer that consists of non-tax revenue, excluding funds holding monies for pensions and retirement, escheats, general fund, federal funds, and bond funds, to be paid to the Fund). Makes conforming change to GS 163-278.97 to add the sources of funding and makes an additional conforming change. Also transfers $2.50 of each $3 allocation under GS 105-159.2 (Public Campaign Fund) to the Fund on a monthly basis during the period from January 1, 2011 through December 31, 2012. Directs the State Board of Elections (Board) to determine available funds, as required under GS 163-278.99(b) as enacted by the section, on either October 1, 2010, or within 30 days of receiving preclearance under the Voting Rights Act of 1965, whichever occurs first. Makes the above provisions effect October 1, 2010.

"Fund Participation and Administration. Amends GS 163-278.98 to require that participating candidates obtain qualifying contributions from at least 900 (was, 750) registered voters in the state, and from an additional 100 registered voters in the state for each $100,000 that the grant amount for the office under GS 163-278.99(b)(4) (fund distribution for contested general elections) exceeds $300,000, provided that multiple contributions from the same individual to the same candidate will not count as more than one qualifying contribution. Further amends the section to require that qualifying contributions be equal to at least $20 times the minimum number of qualifying contributions (was, 25 times the filing fee), but must not exceed the maximum qualifying contributions defined in GS 163-278.96(10), provided that no payment, gift, anything of value, *or* the opportunity to win anything of value will be given in exchange for a qualifying contribution. Limits multiple contributions from the same contributor to the same candidate to $200 during the period from a candidate's declaration of intent through the end of the qualifying period, with the exception of personal and family contributions. Treats up to $200 of a contribution from the candidate's family member as a qualifying contribution if it meets those requirements. Amends GS 163-278.99 (Fund distributions) to provide that no later than August 1 of the second year before an election (was, by August 1, 2011 and no less frequently than every four years thereafter), the Board distributes a determined amount of funds as follows: (1) no funds are distributed to certified candidates with no primary (was, uncontested primaries); and (2) distributes to certified candidates in contested general elections the average amount of campaign-related expenditures made *in the general election* by all candidates who won the immediately preceding three general elections for that office, *rounded to the nearest $1,000*, but not less than $300,000. Specifies that expenditures are made in the general election, for the purposes of this provision, if they must be reported on the third and fourth quarterly reports. Retains current provisions for contested primaries and uncontested general elections. Removes language rounding Fund distributions to the nearest $100. Amends GS 163-278.99B(b) to limit total matching funds before the date of the primary (was, in a contested primary) to an amount equal to the maximum qualifying contributions for a contested primary candidate. Makes matching funds available to a certified candidate with an opponent in the primary or to a certified candidate who is clearly referred to in expenditures reportable under GS 163-278.99A made in opposition to that candidate. Makes a conforming change. Enacts new subsection (f) to GS 163-278.99B to prohibit matching funds as a result of an expenditure that supports or opposes all candidates for the same office. Also prohibits matching funds as a result of an electioneering communication that the Board determines is an appeal to vote for or against all candidates for the same office. Enacts new GS 163-278.99D.1 to direct the Board, with the advice of the Advisory Council for the Public Campaign Fund (Advisory Council), to administer the Voter-Owned

Elections Act (Act), and requires the Advisory Council to issue a report by March 1, 2013 and every two years thereafter that evaluates and makes recommendations on the Act's implementation, and that also addresses activities that could undermine the Act, including spending that appears to target candidates receiving money from the Fund that does not constitute an independent expenditure. Establishes an appeals process, providing that the initial decision on an issue concerning qualification, certification, or distribution of funds will be made by the Executive Director of the Board, and the procedure to challenge that decision is as follows. (1) An individual or entity aggrieved by the decision may appeal, in writing, to the full Board within three business days of the decision. (2) The Board must hold a hearing within five business days after a proper appeal and after due notice is provided; requires the appellant to prove, by clear and convincing evidence, that the decision was improper; and directs the Board to rule on the appeal within three days. Further directs the Board, with the Advisory Council, to adopt procedures and issue opinions for the Act's administration, as detailed. Amends GS 163-278.99E to limit the entire Voter Guide entry for a candidate to 250 words (was, limited to 50 words for endorsements and 150 words for statements). Makes other conforming and clarifying changes. Makes the above provisions effective October 1, 2010.

"Addition of Attorney General to publicly-funded offices. Effective July 1, 2015, adds the office of the Attorney General to the list under GS 163-278.96(12).

"Exchanging Influence or Positions for Gain. Amends GS 126-14 to make it unlawful for an individual, as defined, to coerce a person, as described, to support or contribute to a political candidate, a political committee, or a political party by threatening discipline or promising preferential treatment with regard to that person's business with the individual's State office or to that person's activities regulated by the individual's State office. Makes other technical changes. Amends GS 14-234(a) to add that no public officer or employee may solicit or receive any gift, *favor*, reward, *service*, or promise of reward, *including a promise of future employment* in exchange for preferential treatment related to awarding a contract. Effective December 1, 2010, and applies to offenses committed on or after that date.

'Amends GS 163-278.22(7) to authorize the Board to hire or contract with a special investigator to investigate occurrences under the Voter-Owned Elections Act.

"Criminal Penalties. Amends GS 163-278.27 to make a person or individual who intentionally violates GS 163-278.14(a) (prohibiting contributions in the name of another and anonymous contributions) or GS 163-278.19(a) (prohibiting described contributions from corporations and other professional entities), when the unlawful contributions total more than $10,000 per election, guilty of a Class I felony. Amends GS 163-278.14(a) (prohibiting anonymous contributions) to provide that the subsection does not apply to any contribution by an individual with the lawful authority to act on another's behalf. Effective December 1, 2010, and applies to offenses committed on or after that date.

Grants and Contracts Database. Directs the Board to create a database for the public to use to search for information related to political campaigns. Enacts new GS 143C-2-5 to direct the Governor to require the Office of State Budget and Management (OSBM), with the support of Information Technology Services, to build and maintain a database and website on state spending for grants and contracts. Requires specified parties to conduct a monthly review of all state contracts and grants administered by their respective departments, and directs all state offices, subject to the Governor's authority, to link to NC OpenBook on their agency websites and to facilitate contract and grant searches from their websites. Directs specified offices to provide OSBM information on state contracts necessary for the database and website, and to update the information at least every 30 days. Further directs OSBM to work with certain offices to incorporate data on grants into the database and website. Requires all awarded state contracts and grants in excess of $10,000 to be included in the database and website, and requires the inclusion of additional listed information.

"State Government Ethics Act. Amends GS 138A-3(30), adding offices and officers to the list of individuals defined as *public servants* under the State Government Ethics Act (Ethics Act). Amends GS 143B-478 to apply the Ethics Act to the Governor's Crime Commission. Amends GS 138A-22 to require a covered person holding elected office or a former covered person who held elected office subject to the Ethics Act to file a statement of economic interest, according to three described instances. Amends GS 138A-24 to provide that any statement of economic interest

must be on a form prescribed by the State Ethics Commission (Commission) (was, prescribed by the Commission and sworn to by the filing person). Requires the form to also include the name of each associated business where the filing person or filing person's immediate family is an employee, director, officer, partner, proprietor, or member or manager. Removes, from required inclusion on the form, a list of all nonpublicly owned businesses of which the filing person and the filing person's immediate family is an officer, employee, director, partner, owner, or member or manager of a limited liability company. Adds that the form must include the name of each nonpublicly owned company or business entity, including interests in *sole proprietorships*, among other listed formats. Removes references to *sworn* certification from GS 138A-24(c). Recodifies GS 138A-24(a)(2)i (requiring information on the statement of economic interest related to contracts with specified businesses or companies) as GS 138A-24(a)(14) and makes conforming changes thereto. Makes the provisions related to economic interest statements effective January 1, 2011, and applicable to statements of economic interest filed on or after that date. Amends GS 138A-41 to authorize the Governor to adopt additional and supplemental ethics standards applicable to any appointee of the Governor, and which will be published in the North Carolina Register. Also authorizes the Governor to adopt minimum ethics standards applicable to any employee of a state agency.

"Makes technical changes to GS 120C-303(a), GS 138A-32(c), and GS 138A-32(d1), effective December 1, 2010.

"Amends GS 120C-101(c) to make a rule adopted by the State Ethics Commission under the subsection applicable prospectively, and makes an adopted rule that does not comply with the subsection's procedural requirements null, void and without effect. Defines *rule* for the purposes of the subsection.

"Lobbying. Amends GS 120C-100(a)(10) to remove *payment for services* and associated language; makes a conforming change to GS 120C-100(a)(11k) and GS 120C-300 (prohibiting contingency fees). Also clarifies that a lobbyist is an individual who engages in lobbying *for payment*. Amends GS 120C-100(a)(11) to provide that a lobbyist principal is the person or governmental unit on whose behalf the lobbyist lobbies *and who makes payment for the lobbying*. When a lobbyist is paid by a firm or other retained entity, the principal is the person or governmental unit *who makes payment and* whose interests are represented. Makes clarifying changes to GS 120C-305 (prohibits use of lobbyist's cash or credit), and applies GS 120C-303 (prohibits gifts by lobbyists and lobbyist principals) to that section. Amends GS 120C-403 to require that each lobbyist principal file a quarterly report within 15 (was, 10) business days after the end of the reporting period, and that the report include the name of each person or governmental unit not otherwise registered as a lobbyist principal for whom the lobbyist principal directs or permits the lobbyist to lobby, whether for payment or not. Further requires each lobbyist principal to annually report in the last report of the registration period the total of all payments for lobbying and other activities as described. Provides applicable guidelines for lobbyist principals' reports. Makes technical and clarifying changes to GS 120C-100(a)(9), GS 120C-100(a)(13), GS 120C-400, GS 120C-402(b), GS 120C-404(b)(1), GS 120C-501(e), GS 120C-800(a), GS 138A-3(1), GS 138A-3(15), GS 138A-13(f), GS 138A-24(a)(8), and GS 138A-32(e)(10). Makes the above provisions effective January 1, 2011, and applies to offenses committed on or after that date, and to reports filed on or after that date.

"Restrictions on Lobbyist Registration. Amends GS 120C-304(a) to prohibit a legislator or former legislator from registering as a lobbyist under GS Chapter 120C while in office or within one year after leaving office (was, before the later of close of session in which the legislator served or six months), and makes a conforming change to GS 120C-304(b). Amends GS 120C-304(c) to prohibit an employee of any state agency (was, a public servant or former public servant) from lobbying the state agency that previously employed the former employee (was, register as a lobbyist) within one year (was, six months) after voluntary separation or termination for cause from employment with that agency. Amends GS 120C-200 to require that former employees of a state agency registering as a lobbyist must indicate with which state agency they were employed in the registration. Effective October 1, 2010, and applies to individuals leaving office or employment on or after that date.

"Public Records. Amends the following statutes to make the amount of *each* salary increase or decrease and promotion, demotion, transfer, suspension, separation, or other classification

change (was, most recent) for employees in various agencies and departments subject to inspection, and makes additional technical, organizational and clarifying changes: GS 126-23 (state employee personnel records); GS 115C-320 (local boards of education); GS 115D-28 (community college employee personnel records); GS 122C-158(b) (employees under the Mental Health, Developmental Disabilities, and Substance Abuse Act); GS 153A-98(b) (county employees); GS 160A-168(b) (city employees); and GS 162A-6.1(b) (water and sewer authority employees). Effective October 1, 2010.

"Amends GS 120C-600 to require the Secretary of State to publish annual statistics on complaints received and systematic reviews conducted under the section, including described components. Makes the levy of all civil fines, including the amount of the fine and the identity of the person or governmental unit against whom it was levied, a public record. Amends GS 120C-601 to require the State Ethics Commission to publish annual statistics on complaints, including described components.

"Enacts new GS 7A-38.3E to provide guidelines governing the mediation of public record disputes. Directs that mediation of a public records dispute be initiated by filing a request for mediation with the clerk of the superior court in the county in which the action may be brought. Provides for voluntary mediation, allowing the parties to a public records dispute under GS Chapter 132 to agree at any time prior to filing a civil action under GS Chapter 132 to mediation under the proposed new section. Requires mandatory mediation after a party files a civil action in a public records dispute under GS Chapter 132. Requires that mandatory mediation be initiated no later than 30 days from the timing of the filing of responsive pleadings with the clerk in the county where the action is filed.

"Directs the Administrative Office of the Courts to prescribe a form to request mediation. Provides criteria for service of the mediation form by certified mail with return receipt requested by the filing party. Specifies guidelines for the selection of a mediator and provides for the appointment of a mediator by the senior resident superior court judge when the parties cannot agree on the selection of the mediator.

Directs that except as expressly provided in this proposed statute, the mediation procedure is to be conducted under the provisions for mediated settlement of civil cases in GS 7A-38.1 and GS 7A-38.2 and the rules and standards adopted pursuant to those sections. Also provides that the NC Supreme Court may adopt additional rules and standards to implement the proposed section and may include an exemption from the provisions of GS 7A-38.1 for cases in which mediation was attempted under this section.

"Permits parties to agree to waive mediation with a written notice informing the mediator of the desire for a waiver. Provides that there will be no costs to the parties if all of the parties waive mediation before the initial mediation meeting.

"Upon the conclusion of mediation or the waiver of mediation, directs the mediator to prepare a certification stating that mediation has concluded or has been waived. Specifies that the certification must include the general result of the mediation. Directs the mediator to file an original of the certification with the clerk and provide a copy to each party.

"Provides criteria for the tolling of time periods relating to the filing of a claim or taking other actions regarding a public records dispute. Also provides that nothing in the proposed section is to be construed to limit a party's right to seek injunctive or other relief.

"Makes conforming change to GS 7A-38.2(a) to add mediators and other neutral persons certified or otherwise qualified under new GS 7A-38.3E to those for whom the state Supreme Court may adopt standards of conduct.

"Amends GS 132-9 to provide that a person seeking access to public records must comply with new GS 7A-38.3E prior to the court's issuance of an order compelling disclosure or copying. Permits the court to allow attorneys' fees to a party seeking disclosure of public records who substantially prevails (was, permitted attorneys' fees to the prevailing party, unless the agency acted with substantial justification or the award of fees would be unjust). Provides three exemptions under which the court may not assess attorneys' fees against a governmental body or unit. Effective October 1, 2010.

"Amends GS 138A-14(b) to require the Commission to offer (was, make) ethics presentations. Recodifies GS 138A-24(c2) as GS 138A-22(c2). Amends the catchline of GS 138A-37 to read "legislator participation in legislative (was official) actions."

"Amends GS 138A-38 to clarify that the permitted participation exception applies when a public servant (was, public servant judicial employee) or someone appointed by the public servant to act in the public servant's stead are the only persons with legal authority to take an official action and the public servant provides written disclosure of the circumstances and nature of the conflict of interest.

"Makes technical corrections to GS 138A-38(a), GS 120-104(c), and GS 120C-800(b).

"Effective when the act becomes law, unless otherwise indicated."

After Ms. Churchill finished reviewing the PCS's provisions, Chairman Nesbitt told the Committee that members would deal with this Bill "today," and that additional meetings might be necessary. He then returned to discuss two technical amendments offered.

The firs amendment, offered by Senator Brunstetter, amends the Bill on page 1, lines 19 through 31. The amendment begins amending the Title on Page one, lines 2 through 4, "by deleting the portion of the title beginning with the word "Strengthen" and ending with the word "State." The amendment ends by renumbering Bill sections accordingly to the changes stated above.

Chairman Nesbitt called for discussion regarding the amendment. Senator Brunstetter said that the amendment would further bi-partisanship regarding the Bill. Senator Stein commented that 'we need to give the people the confidence that (this Bill) is for their interest and not their contributors' interest."

Vice Chairman Clodfelter was recognized by Chairman Nesbitt. The Vice Chairman commented that "problems with elections don't just affect one party," and that "money is not a partisan problem."

Senator Blue commented that the State had a unique situation as in North Carolina ten seats on the Council of State are elected. As discussion continued Senator Tillman was recognized and asked "how many Republicans worked on this Bill." Chairman Nesbitt commented that Democrats aren't often asked to work on Republican bills. Senator Berger commented that he thought Republican members were "at the table" regarding the Bill. He then voiced problems with the Bill's provisions on public financing. " ... Republicans will have a problem with this Bill," the Senator said, "because we have a problem with Sections 1 and 2."

After more discussion the amendment was called to a vote. The amendment failed after a show of hands.

Before adjourning the meeting, Chairman Nesbitt recognized Senator Stevens. Senator Stevens commented that "there is a lot of opportunity for discussion." Chairman Nesbitt then adjourned the meeting to reconvene at 11:30 a.m.

Please see the following page for minutes from the second June 22, 2010 morning meeting.

MINUTES

June 22, 2010
Room 1027
Legislative Building
10a.m.

The Senate Judiciary I Committee met June 22, 2010 in Room 1027 of the Legislative Building. Committee Chairman Martin Nesbitt presided, calling the meeting to order at 11:35 a.m.

This is the second of two meetings recorded in this set of minutes on the day of June 22, 2010.

In attendance with Chairman Nesbitt were Committee Vice Chairman Dan Clodfelter, Vice Chairman Pete Brunstetter, Vice Chairman R. C. Soles and Vice Chairman Josh Stein. Also present were members Senator Charlie Albertson, Senator Dan Blue, Senator Andrew Brock, Senator Harry Brown, Senator Margaret Dickson, Senator Malcolm Graham, Senator David Hoyle, Senator Clark Jenkins, Senator Ellie Kinnaird, Senator Floyd McKissick, Senator David Rouzer, Senator Richard Stevens and Senator Jerry Tillman. Staff present was Committee Counsel Erika Churchill, Giles Perry, Bill Patterson and Committee Assistant Jessica Kozma Proctor.

House Bill 961

Chairman Nesbitt re-opened discussion about House Bill 961, the "Gov't Ethics and Campaign Reform Act of 2010."

Several amendments were offered.

*

In the first amendment, Senator Brunstetter moved to amend the Bill on Page 14, Line 41 by "inserting 'or for cause' between 'voluntary' and 'separation;'" and in the same amendment to amend on Page 14, Line 41 by inserting "or for cause" between "voluntary and separation."

The amendment passed by unanimous vote.

*

In a second and third amendment, Senator Brunstetter moved to amend the Bill on Page 9, Line 5 by inserting "clear and convincing" between "providing and evidence." He also moved to amend the Bill (Amendment 3) by inserting "or for cause" between "voluntary" and "separation;" also to do the same on Page 14, Line 41. Both amendments passed unanimously.

*

Senator Stevens then moved to amend the Bill on Page 2, Line 7 by inserting "Attorney General" between "of" and "Secretary;" and on Page 2, Lines 9-10 by rewriting those lines to read "held in 2012 and thereafter." Also, the amendment

moves to insert at Page 2, Line 49 "Attorney General" between "Auditor" and "Secretary." Lastly, the amendment moves that on Page 13, Lines 25-31 by deleting those lines.

After some discussion, Senator Stevens withdraw his amendment.

*

Senator Stevens then moved to amend the Bill on Page 28, Line 9, on Page 32, Line 1, Page 34, Line 4 by deleting "act" and substituting "section."

The amendment passed unanimously.

*

Senator Clodfelter offered to amend the Bill on Page 28, Lines 18, 25, 28 and 47. This amendment was withdrawn.

*

Senator Clodfelter offered to amend the Bill on Page 33, Lines 8 and 9 by inserting the between those lines: "(h) nothing in this section shall be construed to limit any party's authority to seek or the timing of seeking injunctive or other relief pursuant to Chapter 132 of the General Statutes."

The amendment passed unanimously.

After deliberating through the amendments, Chairman Nesbitt called for members to make share their final discussion about the Bill. Senator Hoyle moved for favorable report, unfavorable as to original bill with a sequential referred to the Senate Finance Committee. The motion passed and the bill is re-referred to the Senate Finance Committee.

Chairman Nesbitt adjourned the meeting at 12:52 p.m.

June 22, 2010

H 961. GOV'T ETHICS AND CAMPAIGN REFORM ACT OF 2010. Filed 3/31/09. Senate committee substitute makes the following changes to 4th edition.

Sets a filing fee of $205 (was, $200) for the filing of an annual report with the Secretary of State under GS 57C-1-22(a)(25).

Clarifies that of the fees charged under GS 95-110.5 (20) (regarding the safe operation of lifting devices and equipment), an additional $5 is to be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163. Also clarifies that of the fees charged under GS 95-69.11(11) (regarding the safe operation of boilers and pressure vessels) an additional $5 is to be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163.

Amends new subdivision (18) to GS 106-22 to clarify that the provisions apply to every rental agreement for real property where the Board of Agriculture (Board) or the Commissioner of Agriculture (Commissioner) is the lessor. Directs the Board or Commissioner that is acting as the lessor of real property to charge an additional 3% which is to be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 (was, directed the Board or Commissioner to pay 5% of the rental agreement into the Voter-Owned Elections Fund).

Clarifies in 120C-100(a)(11) that when a lobbyist is paid by an entity retained by a person or governmental unit for lobbying, the principal is the one whose interest the lobbyist represents.

Amends GS 120C-304(c) to clarify that no public servant or former public servant as defined in GS 138A-3(30)c may register as a lobbyist within one year after separation. Further provides that no other state employee may register as a lobbyist under Chapter 120C and lobby the state agency that previously employed the former employee within one year after the voluntary separation or separation for cause by the employee.

Amends proposed GS 7A-38.3E(h) to provide that nothing in GS 7A-38.3E is to be construed to prohibit a party who is seeking production of public records from seeking injunctive or other relief, including seeking the production of public records before any scheduled mediation.

Makes additional clarifying changes and technical corrections.

Senator Martin Nesbitt, Jr.
Chairman

Jessica Kozma Proctor
Committee Clerk

AGENDA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

SENATOR MARTIN L. NESBITT, CHAIRMAN
Senator Pete Brunstetter, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman
Senator Josh Stein, Vice Chairman

Tuesday June 22, 2010
10 a.m.
Room 1027

1. **Call Meeting to Order.**

2. **Recognize members, staff, and guests.**

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
HB 961	Pay to Play Regulation.	Representative Ross Representative Goodwin Representative Stam Representative Glazier

Adjournment.

AGENDA

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SENATE JUDICIARY I COMMITTEE

SENATOR MARTIN L. NESBITT, CHAIRMAN
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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 961
Committee Substitute Favorable 4/15/09
Committee Substitute #2 Favorable 5/12/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H961-CSSTx-94 [v.10]

6/21/2010 11:13:49 PM

Short Title: Gov't Ethics and Campaign Reform Act of 2010. (Public)

Sponsors:

Referred to:

April 1, 2009

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN PUBLIC CONFIDENCE IN THE ELECTION PROCESS FOR COUNCIL OF STATE OFFICES THAT REGULATE INDIVIDUALS AND BUSINESSES IN THIS STATE; TO PROVIDE LIMITS ON THE TRADING OF INFLUENCE OR POSITION FOR GAIN; TO INCREASE THE PUNISHMENT FOR MAKING CAMPAIGN CONTRIBUTIONS IN THE NAME OF ANOTHER; TO INCREASE ACCESSIBILITY TO INFORMATION RELATED TO CANDIDATE CAMPAIGN COMMITTEES; TO STRENGTHEN PUBLIC CONFIDENCE IN GOVERNMENT BY INCREASING THE REVOLVING DOOR PERIOD AND APPLICABILITY; TO STRENGTHEN TRANSPARENCY OF GOVERNMENT THROUGH ADDITIONAL DISCLOSURES BY PUBLIC SERVANTS; TO INCREASE ACCOUNTABILITY OF PUBLIC SERVANTS, APPOINTEES OF THE GOVERNOR, AND STATE EMPLOYEES BY PERMITTING THE GOVERNOR TO ADOPT MINIMUM STANDARDS OF ETHICAL CONDUCT; TO STRENGTHEN TRANSPARENCY OF GOVERNMENT THROUGH INCREASING ACCESSIBILITY TO PUBLIC RECORDS; TO MAKE TECHNICAL CHANGES; AND TO MAKE OTHER CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 22J of Chapter 163 of the General Statutes reads as rewritten:

"Article 22J.

"The Voter-Owned Elections Act.

"§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.

The purpose of this Article is to ensure the vitality and fairness of democratic elections for elected offices that implement and provide oversight on the regulation or investigation of individuals, businesses, or government in North Carolina to the end that any eligible citizen of this State can realistically choose to seek and run for that public office. It is also the purpose of this Article to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption within regulatory or investigatory offices overseen by elected officials is minimized and that the equal and meaningful participation of all citizens

in the democratic process is ensured. Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund as an alternative source of campaign financing for candidates who obtain a sufficient number of qualifying contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for the Council of State offices of Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in elections to be held in 2008 and ~~thereafter.~~ thereafter; to candidates for the Council of State office of Secretary of State and Treasurer, and to candidates for the offices of Commissioner of Agriculture and Commissioner of Labor, in elections to be held in 2012 and thereafter; and to candidates for the Council of State office of Attorney General in elections to be held in 2016 and thereafter.

"§ 163-278.96. Definitions.

The following definitions apply in this Article:

(1) Board. – The State Board of Elections.

(2) Campaign-related expenditure. – An expenditure that benefits the candidate's current campaign in accordance with guidelines established by the Board.

(3) Candidate. – An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a "candidate campaign committee" as defined in G.S. 163-278.38Z(3).

(4) Certified candidate. – A candidate for office who chooses to receive campaign funds from the Fund and who is certified under G.S. 163-278.98(c). A write-in candidate authorized under G.S. 163-123 is not eligible to become a certified candidate.

(5) Contested primary and contested general election. – An election in which there are more candidates than the number to be elected.

(6) Contribution. – Defined in G.S. 163-278.6. A distribution from the Fund pursuant to this Article is not a "contribution" and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or G.S. 163-278.19. Instead of being subject to G.S. 163-278.16B, distributions are subject to the guidelines issued by the Board pursuant to G.S. 163-278.98(e)(5).

(6a) Electioneering communication. – As defined in G.S. 163-278.80 and G.S. 163-278.90, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day.

(7) Expenditure. – Defined in G.S. 163-278.6.

(8) Fund. – The North Carolina Voter-Owned Elections Fund established in G.S. 163-278.97.

(9) Independent expenditure. – Defined in G.S. 163-278.6.

(10) Maximum qualifying contributions. – If the candidate has ~~an uncontested~~ no primary, an amount equal to ~~100~~one hundred dollars ($100.00) times the ~~filing fee~~ minimum number of registered voters required to make a qualifying contribution under G.S. 163-278.98(b) for the office sought. If the candidate has a contested primary, ~~200~~ two hundred dollars ($200.00) times the ~~filing fee~~ minimum number of registered voters required to make a qualifying contributions under G.S. 163-278.98(b) for the office sought.

(11) Nonparticipating candidate. – A candidate for office who is not seeking to be certified under G.S. 163-278.98(c).

(12) Office. – The Council of State offices of Auditor, Secretary of State, Superintendent of Public Instruction, Treasurer, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

(13) Participating candidate. – A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.98(a).

(14) Political committee. – Defined in G.S. 163-278.6.

(15) Qualifying contribution. – A contribution of not less than ten dollars ($10.00) and not more than two hundred dollars ($200.00) in the form ~~of a check or money order~~ prescribed for noncash monetary contributions in G.S. 163-278.14(b) to the candidate that meets both of the following conditions:

a. Made by ~~any~~ an individual who is a registered voter in this ~~State.~~State at the time of the submittal of the report specified in G.S. 163-278.98(c).

b. Made only during the qualifying period and obtained with the approval of the candidate or candidate's committee.

(16) Qualifying period. – The period beginning September 1 in the year before the election and ending on the day of the primary.

(17) Trigger for matching funds. – The dollar amount at which matching funds are released under G.S. 163-278.99B for certified candidates. In the case of a contested primary, the trigger equals the maximum qualifying contributions for the candidate. In the case of a contested general election, the trigger equals the base level of funding available under G.S. 163-278.99(b)(4).

"**§ 163-278.97. Voter-Owned Elections Fund established; sources of funding.**

(a) Establishment of Fund. – The North Carolina Voter-Owned Elections Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

(b) Sources of Funding. – Money received from all the following sources must be deposited in the Fund:

(1) Unspent Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.

(2) Money ordered returned to the Fund in accordance with G.S. 163-278.99D.

(3) Money paid to the Fund equal to excess contributions as provided in G.S. 163-278.98(e)(1).

(4) Voluntary donations made directly to the Fund.

(5) Appropriations from the General Fund.

(6) Money collected pursuant to G.S. 55A-1-22, G.S. 57C-1-22, G.S. 58-33-125, G.S. 78A-35, G.S. 95-110.5(20), G.S. 95-69.11(11), G.S. 106-22, and G.S.147-69.2(e).

(c) Evaluation and Determination of Fund Amount. – By January 1, 2011, and every four years thereafter, the Board, in conjunction with the Advisory Council established under G.S. 163-278.68(b), shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund during the next election cycle ~~and make recommendations about the feasibility of expanding its provisions to include other candidates for State office~~ based on the experience of this Article and the experience of similar programs in North Carolina and other states. The Board shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates but is not reached by regulation.

"§ 163-278.98. Requirements for participation.

(a) Declaration of Intent to Participate. – Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the program established by this Article as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, campaign-related expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (e) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. – In order to be certified, participating candidates must obtain qualifying contributions from at least ~~750~~ 900 registered voters in this ~~State.~~ State, and from an additional 100 registered voters in this State for each one hundred thousand dollars ($100,000) that the grant amount for the office under G.S. 163-278.99(b)(4) exceeds three hundred thousand dollars ($300,000). Multiple contributions from the same individual to the same candidate shall not count as more than one qualifying contribution.

The qualifying contributions shall be equal to at least ~~25~~ twenty dollars ($20.00) times the ~~amount of the filing fee for the office.~~ minimum number of qualifying contributions but shall not exceed the maximum qualifying contributions defined in G.S. 163-278.96(10). No payment, gift, ~~or~~ anything of ~~value~~ value, or the opportunity to win anything of value shall be given in exchange for a qualifying contribution.

(c) Certification of Candidates. – Upon receipt of a submittal of the record of qualifying contributions by a participating candidate, the Board shall determine whether or not the candidate has:

(1) Filed a completed declaration of intent to participate in this Article.

(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.

(3) Filed a notice of candidacy with the State Board of Elections as a candidate for the office.

(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of qualifying contributions.

(d) Final Report for Qualifying Contributions. – No later than five business days after the end of the qualifying period, all participating candidates shall submit a report to the Board of all previously unreported qualifying contributions, in accordance with procedures developed by the Board. Within seven business days after submittal of the final report, the Board shall determine, through a random audit or other means it adopts, whether the contributions abide by the definition of qualifying contributions, whether they must be returned to the donor, and whether they exceed the maximum amount of qualifying contributions.

(e) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. – The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning August 1 of the year before the election and before filing a declaration of intent, a candidate shall limit campaign-related expenditures to twenty thousand dollars ($20,000) and shall not accept more than twenty thousand dollars ($20,000) from sources and in amounts permitted by Article 22A of this Chapter. A candidate who exceeds either of these limits

shall be ineligible to file a declaration of intent or receive funds from the Fund. However, the acceptance of contributions in excess of that twenty thousand dollar ($20,000) limit does not render the candidate ineligible if the candidate pays to the Board an amount equal to the contributions accepted by the candidate in excess of that limit. The Board shall deposit all such payments into the Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, in-kind party contributions as permitted in subdivision (4) of this subsection, and personal and family contributions permitted under subdivision (4a) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. Except for personal and family contributions permitted under subdivision (4a) of this subsection, multiple contributions from the same contributor to the same candidate shall not exceed two hundred dollars ($200.00). In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this subsection and possible matching funds received pursuant to G.S. 163-278.99B. If the candidate has any remaining money that was raised as contributions before August 1 of the year before the election, the candidate may not expend that money after filing the declaration of intent, except for purposes permitted under subdivision (2), (3), (6), (7), or (8) of G.S. 163-278.16B(a).

(3) After the qualifying period and through the date of the general election, the candidate shall cease campaign-related fund-raising activities and shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.99(b) plus any funds remaining from the qualifying period and possible matching funds.

(4) In addition to the amounts above, a candidate may accept in-kind contributions from political party executive committees, up to an aggregate value of thirty thousand dollars ($30,000) for the election cycle.

(4a) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. The candidate may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister. Up to two hundred dollars ($200.00) of a contribution from the candidate's family member may be treated as a qualifying contribution if it meets the requirements of G.S. 163-278.96(15)a. and b.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures.

(6) Except as provided in subdivision (1) of this subsection, any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.99D. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(f) Revocation. – A candidate may revoke, in writing to the Board, a decision to participate in the Fund at any time. After a revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund.

"§ 163-278.99. Distribution from the Fund.

(a) Timing of Fund Distribution. – The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section as follows:

(1) One-third of the amount within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(2) The remainder of the amount on August 1 before the general election.

(b) Amount of Fund Distribution. ~~– By August 1, 2011, and no less frequently than every four years thereafter,~~ No later than August 1 of the second year before an election, the Board shall determine the amount of funds, ~~rounded to the nearest one hundred dollars ($100.00),~~ to be distributed to certified candidates as follows:

(1) ~~Uncontested primaries.~~ No primary. – No funds shall be distributed.

(2) Contested primaries. – No funds shall be distributed except as provided in G.S. 163-278.99B.

(3) Uncontested general elections. – No funds shall be distributed.

(4) Contested general elections. – The amount of funds to be distributed to a candidate is the average amount of campaign-related expenditures made in the general election by all candidates who won the immediately preceding three general elections for that office, rounded to the nearest one thousand dollars ($1,000), but not less than three hundred thousand dollars ($300,000). For purposes of this subsection, "campaign-related expenditures" does not include loan repayments and contributions to a candidate, political committee, or political party. For purposes of this subsection, expenditures are made in the general election if they are required to be reported on the third and fourth quarterly reports.

(c) Method of Fund Distribution. – The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding, and the candidate may raise additional money in the same manner as a nonparticipating candidate for the same office up to the unfunded amount of the candidate's eligible funding.

"§ 163-278.99A. Reporting requirements.

(a) Reporting by Noncertified Candidates and Other Entities. – Any nonparticipating candidate with a certified opponent shall report total contributions received to the Board by facsimile machine or electronically within 24 hours after the total amount of contributions received exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163-278.96(17). Any entity making independent expenditures in support of or in opposition to a certified candidate, or in support of a candidate opposing a certified candidate, or paying for electioneering communications referring to one of those candidates, shall report

the total funds received, spent, or obligated for those expenditures or payments to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures or electioneering communications exceeds five thousand dollars ($5,000). After the initial 24-hour filing, the nonparticipating candidate or other reporting entity shall comply with an expedited reporting schedule. The schedule and forms for reports required by this subsection shall be supplied by the Board.

(b) Reporting by Participating and Certified Candidates. – Notwithstanding other provisions of law, participating and certified candidates shall report any money received and all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. Upon the filing of a final report for any losing primary election, special election, or general election, each candidate who has revenues from the Fund remaining unspent shall return those revenues to the Board. In developing these procedures, the Board shall utilize existing campaign reporting procedures wherever practicable.

(c) Timely Access to Reports. – The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information.

"§ 163-278.99B. Matching funds.

(a) When Matching Funds Become Available. – When any report or group of reports shows that "funds in opposition to a certified candidate or in support of an opponent to that candidate" as described in this section exceed the trigger for matching funds as defined in G.S. 163-278.96(17), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. "Funds in opposition to a certified candidate or in support of an opponent to that candidate" shall be equal to the sum of subdivisions (1) and (2) as follows:

(1) The greater of the following:

a. Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one nonparticipating opponent of a certified candidate. Where a certified candidate has more than one nonparticipating opponent, the measure shall be taken from the nonparticipating candidate showing the highest relevant dollar amount.

b. The funds distributed in accordance with G.S. 163-278.99(b) to a certified opponent of the certified candidate.

(2) The aggregate total of all expenditures and payments reported in accordance with G.S. 163-278.99A(a) of entities making independent expenditures or electioneering communications in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Matching Funds ~~in Contested Primary.~~ Before Date of Primary. – Total matching funds to a certified candidate ~~in a contested~~ before the date of the primary shall be limited to an amount equal to the maximum qualifying contributions for a candidate with a contested primary. Matching funds are available to a certified candidate with an opponent in the primary or to a certified candidate who is clearly referred to in expenditures reportable under G.S. 163-278.99A made in opposition to that candidate.

(c) Limit on Matching Funds in Contested General Election. – Total matching funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163-278.99(b)(4).

(d) Determinations by Board. – In the case of electioneering communications, the Board shall determine which candidate, if any, is entitled to receive matching funds as a result of the communication. The Board shall issue matching funds based on the communication only if it ascertains that the communication is susceptible of no reasonable interpretation other than

as an appeal to vote for or against a specific candidate. In making its determination, the Board shall not consider evidence external to the communication itself of the intent of the sponsor or the effect of the communication. The Board shall notify each candidate it determines is entitled to receive matching funds based on those communications, the sponsor of those communications, and any candidate who is an opponent of the candidate it determines is entitled to the matching funds. The Board shall give the sponsor of the communication and any opposing candidate an adequate opportunity to rebut the determination of the Board. In considering the rebuttal, all candidates in the race and the sponsor shall be given adequate and equal opportunity to be heard. The Board shall adopt procedures for implementing this subsection, balancing in those procedures adequacy of opportunity to rebut and adequacy and equality of opportunity to be heard on the rebuttal with the need to expedite the decision on awarding matching funds. The Board shall distribute the matching funds, if any, at the conclusion of its process.

(e) Proportional Measuring of Multicandidate Communications. – In calculating the amount of matching funds a certified candidate is eligible to receive under this section, the Board shall include the proportion of expenditures, obligations, or payments for multicandidate communications that pertains to the candidate.

(f) No Matching Funds for Communications Supporting or Opposing All Candidates. – No matching funds are available under this section as a result of an expenditure that supports all candidates for the same office or opposes all candidates for the same office. No matching funds are available under this section as a result of an electioneering communication that the Board ascertains is susceptible of no reasonable interpretation other than as an appeal to vote for all candidates for the same office or to vote against all candidates for the same office.

"**§ 163-278.99C. Unaffiliated and new-party candidates.**

Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the same amounts and at the same time as specified in G.S. 163-278.99. For unaffiliated candidates and new-party candidates not certified to appear on the ballot by noon on the deadline set in G.S. 163-106(c) for candidate filing in the election year, the deadline for seeking certification to receive revenue from the Fund is noon on the first business day of July of the election year.

"**§ 163-278.99D. Enforcement by the Board; civil penalty.**

In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation or three times the amount of any financial transactions involved in the violation, whichever is greater. In addition to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the Board makes a determination that a violation of this Article has occurred, the Board shall calculate and assess the amount of the civil penalty and shall notify the entity that is assessed the civil penalty of the amount that has been assessed. The Board shall then proceed in the manner prescribed in G.S. 163-278.34. In determining whether or not a candidate is in violation of this Article, the Board may consider as a mitigating factor any circumstances out of the candidate's control.

"**§ 163-278.99D.1. Enforcement and administration.**

(a) Enforcement by the Board. – The Board, with the advice of the Advisory Council for the Public Campaign Fund established by G.S. 163-278.68, shall administer the provisions of this Article.

(b) Appeals. – The initial decision on an issue concerning qualification, certification, or distribution of funds under this Article shall be made by the Executive Director of the Board. The procedure for challenging that decision is as follows:

(1) An individual or entity aggrieved by a decision by the Executive Director of the Board may appeal to the full Board within three business days of the

decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five business days after an appeal is properly made, and after due notice is given to the parties, the Board shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the decision of the Executive Director was improper. The Board shall rule on the appeal within three business days after the completion of the hearing.

(c) Board to Adopt Procedures and Issue Opinions. – The Board shall adopt procedures and issue opinions to ensure effective administration of this Article. Such procedures and opinions shall include, but not be limited to, procedures for obtaining qualifying contributions, certification of candidates, addressing circumstances involving special elections, vacancies, recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance with this Article. The Board shall adopt procedures for the distribution of matching money that further the purpose and avoid the subversion of G.S. 163-278.99B. For races involving special elections, recounts, vacancies, withdrawals, or replacement candidates, the Board shall establish procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues. Where applicable, the Board shall adapt the provisions of G.S. 163-278.64A. The Board shall fulfill each of these duties in consultation with the Advisory Council on the Public Campaign Fund.

(d) Report to the Public. – The Advisory Council for the Public Campaign Fund shall issue a report by March 1, 2013, and every two years thereafter that evaluates and makes recommendations about the implementation of this Article based on the experience of the Fund and the experience of similar programs in other states. The Advisory Council shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates receiving money from the Fund but that does not meet the definition of "independent expenditures."

"§ 163-278.99E. Voter education.

(a) Voter Guide. – The Board shall publish a Voter Guide that explains the functions of ~~office as defined in G.S. 163-278.96(12) and the laws concerning the election~~ all 10 offices of the Council of State, the purpose and function of the Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The State Board of Elections shall maintain a list of the addresses from which mailed Voter Guides are returned as undeliverable. That list shall be available for public inspection. The distribution shall occur no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the primary and no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the general election.

(b) Candidate Information. – The Voter Guide shall include information concerning all candidates for ~~office as defined in G.S. 163-278.96(12),~~ all 10 of the offices of the Council of State, as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

(1) Place of residence.
(2) Education.
(3) Occupation.
(4) Employer.
(5) Previous elective offices held.
(6) ~~Endorsements, limited to 50 words.~~ Endorsements. Concerning endorsements, the Board shall send to the candidates instructions as follows: "In order to have an endorsement published, you must provide written

confirmation to the Board from the endorsing person or organization that you received that person's or organization's endorsement."

(7) Candidate ~~statement, limited to 150 words.~~ Statement. Concerning that statement, the Board shall send to the candidates instructions as follows: "Your statement may include information such as your qualifications, your endorsements, why you would make a good elected official, what distinguishes you from your opponent(s), and any other information relevant to your candidacy. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language. The candidate shall have three days to resubmit the candidate statement if the Board rejects a portion of the statement."

The entire entry for a candidate shall be limited to 250 words.

(c) Disclaimer. – The Voter Guide shall contain the following statement: "Statements by candidates do not express or reflect the opinions of the State Board of Elections."

(d) Relationship to the Judicial Voter Guide. ~~The Board may~~ Whenever possible, the Board shall publish the Voter Guide in conjunction with the Judicial Voter Guide described in G.S. 163-278.69."

SECTION 1.(b) G.S. 55A-1-22 reads as rewritten:

"**§ 55A-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	~~$60.00~~$65.00
(2)	Application for reserved name	$10.00
(3)	Notice of transfer of reserved name	$10.00
(4)	Application for registered name	$10.00
(5)	Application for renewal of registered name	$10.00
(6)	Corporation's statement of change of registered agent or registered office or both	$ 5.00
(7)	Agent's statement of change of registered office for each affected corporation	$ 5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	$ 5.00
(10)	Amendment of articles of incorporation	$25.00
(11)	Restated articles of incorporation without amendment of articles	$10.00
(12)	Restated articles of incorporation with amendment of articles	$25.00
(13)	Articles of merger	$25.00
(14)	Articles of dissolution	$15.00
(15)	Articles of revocation of dissolution	$10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Application for reinstatement following administrative dissolution	$100.00
(18)	Certificate of reinstatement	No fee
(19)	Certificate of judicial dissolution	No fee
(20)	Application for certificate of authority	$125.00
(21)	Application for amended certificate of authority	$25.00
(22)	Application for certificate of withdrawal	$10.00
(23)	Certificate of revocation of authority to conduct affairs	No fee
(24)	Corporation's Statement of Change of Principal Office	$ 5.00
(24a)	Designation of Principal Office Address	$ 5.00

(25)	Articles of correction	$10.00
(26)	Application for certificate of existence or authorization (paper)	$15.00
(26a)	Application for certificate of existence or authorization (electronic)	$10.00
(27)	Any other document required or permitted to be filed by this Chapter	$10.00
(28)	Repealed by Session Laws 2001-358, s. 7(c), effective January 1, 2002.	

(a1) Of the fee charged pursuant to subdivision (a)(1) of subsection (a) of this section, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original.

(2) Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate."

SECTION 1.(c) G.S. 57C-1-22 reads as rewritten:

"**§ 57C-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	Articles of organization	~~$125.00~~$130.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(12a)	Articles of conversion (other than articles of conversion included as part of another document)	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	Cancellation of articles of dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(16a)	Application for reinstatement following administrative dissolution	100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	250.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee

(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization (paper)	15.00
(24a)	Application for certificate of existence or authorization (electronic)	10.00
(25)	Annual report	200.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00
(27)	Repealed by Session Laws 2001-358, s. 8(c).	

(a1) Of the fee charged pursuant to subdivision (a)(1) of subsection (a) of this section, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited liability company:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate."

SECTION 1.(d) G.S. 58-33-125(c) reads as rewritten:

"(c) Any person who is not licensed and who is required by law or administrative rule to secure a license shall, upon application for licensing, pay to the Commissioner a fee of ~~fifty dollars ($50.00).~~ fifty-five dollars ($55.00). If additional licensing for other kinds of insurance is requested, a fee of ~~fifty dollars ($50.00)~~fifty-five dollars ($55.00) shall be paid to the Commissioner upon application for licensing for each additional kind of insurance. Of the fifty-five dollar ($55.00) fee charged five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund or distribution in accordance with Article 22J of Chapter 163 of the General Statutes.

In addition to the fees prescribed by this subsection, any person applying for a supplemental license to sell Medicare supplement and long-term care insurance policies shall pay an additional fee of fifty dollars ($50.00) upon application for licensing for those kinds of insurance."

SECTION 1.(e) G.S. 78A-37(b) reads as rewritten:

"(b) Every applicant for initial or renewal registration shall pay a filing fee of ~~three hundred dollars ($300.00)~~ three hundred and five dollars ($305.00) in the case of a dealer and ~~one hundred twenty-five dollars ($125.00)~~one hundred thirty dollars ($130.00) in the case of a salesman. The Administrator may by rule reduce the registration fee proportionately when the registration will be in effect for less than a full year. Of a fee charged pursuant this subsection, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(f) G.S. 95-110.5(20) reads as rewritten:

"(20) To establish fees not to exceed two hundred dollars ($200.00) for the inspection and issuance of certificates of operation for all devices and equipment subject to this Article upon installation or alteration, for each follow-up inspection, and for annual periodic inspections thereafter. Of the fee charged pursuant to this subdivision, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(g) G.S. 95-69.11(11) reads as rewritten:

"(11) To establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels that are in use. Of any fee

charged pursuant to this subdivision, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(h) G.S. 106-22 is amended by adding a new subdivision to read:

"(18) Rental agreements. – For every rental agreement where the Board or the Commissioner is the lessor, the Board or Commissioner shall pay five percent (5%) of the rental agreement into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(i) G.S. 147-69.2 is amended by adding a new subsection to read:

"(e) There shall be charged a fee of two one-hundredths of a percent (.02%) on each fund held by the Treasurer that consists of non-tax revenue, excluding funds holding monies for pensions and retirement, escheats, general fund, federal funds, and bond proceeds, to be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(j) For the period January 1, 2011 through December 31, 2012, two dollars and fifty cents ($2.50) of each three dollar ($3.00) allocation under G.S. 105-159.2 shall be transferred on a monthly basis to the North Carolina Voter-Owned Election Fund for distribution under Article 22J of Chapter 163 of the General Statutes in the 2012 election.

SECTION 1.(k) The State Board of Elections shall make the determination of available funds required by G.S. 163-278.99(b), as enacted by this section, on October 1, 2010, or within 30 of receiving preclearance under Section 5 of the Voting Rights Act of 1965, whichever date occurs first.

SECTION 1.(l) This section becomes effective October 1, 2010.

SECTION 2.(a) G.S. 163-278.96(12), as amended by Section 1 of this act, reads as rewritten:

"(12) Office. – The Council of State offices of Attorney General, Auditor, Secretary of State, Superintendent of Public Instruction, Treasurer, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance."

SECTION 2.(b) This section becomes effective July 1, 2015.

SECTION 3. G.S. 126-14 reads as rewritten:

"**§ 126-14. Promise or threat to obtain political contribution or support.**

(a) It is unlawful for a State employee or a person appointed to State office, other than elective office or office on a board, commission, committee, or council whose function is advisory only, whether or not subject to the Personnel Act, to coerce:

(1) a State employee subject to the Personnel Act,
(2) a probationary State employee,
(3) a temporary State employee, or
(4) an applicant for a position subject to the Personnel Act

to support or contribute to a political candidate, political committee as defined in G.S. 163-278.6, or political party or to change the party designation of ~~his~~ the individual's voter registration by threatening that change in employment status or discipline or preferential personnel treatment will occur with regard to ~~a person~~an individual listed in subdivisions (1) through (4).

(a1) It is unlawful for an individual as defined in G.S. 138A-3(30)a. to coerce a person as described in G.S. 138A-32(d)(1), (2), or (3) to support or contribute to a political candidate, a political committee as defined in G.S. 163-278.6, or a political party by threatening discipline or promising preferential treatment with regard to that person's business with the individual's State office or that person's activities regulated by the individual's State office.

(b) Any person violating this section shall be guilty of a Class 2 misdemeanor.

(c) A State employee subject to the Personnel Act, probationary State employee, or temporary State employee who without probable cause falsely accuses a State employee or a person appointed to State office of violating this section shall be subject to discipline or change in employment status in accordance with the provisions of G.S. 126-35, 126-37, and 126-38 and may, as otherwise provided by law, be subject to criminal penalties for perjury or civil liability for libel, slander, or malicious prosecution."

SECTION 4.(a) G.S. 14-234(a) reads as rewritten:

"**§ 14-234. Public officers or employees benefiting from public contracts; exceptions.**

(a) (1) No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.

(2) A public officer or employee who will derive a direct benefit from a contract with the public agency he or she serves, but who is not involved in making or administering the contract, shall not attempt to influence any other person who is involved in making or administering the contract.

(3) No public officer or employee may solicit or receive any gift, favor, reward, service, or promise of ~~reward~~ reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves."

SECTION 4.(b) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 5.(a) G.S. 120C-304(a) reads as rewritten:

"(a) No legislator or former legislator may register as a lobbyist under this ~~Chapter:~~Chapter

~~(1)~~ ~~While~~while in ~~office.~~office or

~~(2)~~ ~~Before the later of the close of session as set forth in G.S. 120C-100(a)(4)b.1 in which the legislator served or six months~~ within one year after leaving office."

SECTION 5.(b) G.S. 120C-304(b) reads as rewritten:

"(b) No public servant or former public servant as defined in G.S. 138A-3(30)a. may register as a lobbyist under this Chapter while in office or within ~~six months~~ one year after leaving office."

SECTION 5.(c) G.S. 120C-304(c) reads as rewritten:

"(c) No ~~public servant or former public servant as defined in G.S. 138A-3(30)c.~~ employee of any State agency may ~~register as a lobbyist under this Chapter~~lobby the State agency that previously employed the former employee within ~~six months~~one year after voluntary separation from employment ~~as a public servant.~~with that State agency."

SECTION 5.(d) G.S. 120C-200 is amended by adding a new subsection to read:

"(f) In addition to the information required for registration under subsection (b) of this section, former employees of a State agency who register as a lobbyist within one year after voluntary separation from employment with the State agency shall also indicate which State agency was employed."

SECTION 5.(e) This section becomes effective October 1, 2010, and applies to individuals leaving office or employment on or after that date.

SECTION 6. G.S. 163-278.22(7) reads as rewritten:

"(7) To make investigations to the extent the Board deems necessary with respect to statements filed under the provisions of this Article and with respect to alleged failures to file any statement required under the provisions of this Article or Article 22M of the General Statutes and, upon complaint under oath by any registered voter, with respect to alleged violations of any part of this Article or Article 22M of the General Statutes. The Board has the

authority to hire or contract with a special investigator, if needed, for this purpose."

SECTION 7.(a) G.S. 163-278.27 reads as rewritten:

"**§ 163-278.27. Criminal penalties; duty to report and prosecute.**

(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D, 163-278.40E, or 163-278.40J is guilty of a Class 2 misdemeanor. The statute of limitations as stated in G.S. 15-1 shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred.

(a1) A violation of G.S. 163-278.32 by making a certification knowing the information to be untrue is a Class I felony.

(a2) A person or individual who intentionally violates G.S. 163-278.14(a) or G.S. 163-278.19(a) and the unlawful contributions total more than ten thousand dollars ($10,000.00) per election is guilty of a Class I felony.

(b) Whenever the Board has knowledge of or has reason to believe there has been a violation of any section of this Article, it shall report that fact, together with accompanying details, to the following prosecuting authorities:

(1) In the case of a candidate for nomination or election to the State Senate or State House of Representatives: report to the district attorney of the prosecutorial district in which the candidate for nomination or election resides;

(2) In the case of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, State Attorney General, State Commissioner of Agriculture, State Commissioner of Labor, State Commissioner of Insurance, and all other State elective offices, Justice of the Supreme Court, Judge of the Court of Appeals, judge of a superior court, judge of a district court, and district attorney of the superior court: report to the district attorney of the prosecutorial district in which Wake County is located;

(3) In the case of an individual other than a candidate, including, without limitation, violations by members of political committees, referendum committees or treasurers: report to the district attorney of the prosecutorial district in which the individual resides; and

(4) In the case of a person or any group of individuals: report to the district attorney or district attorneys [of] the prosecutorial district or districts in which any of the officers, directors, agents, employees or members of the person or group reside.

(c) Upon receipt of such a report from the Board, the appropriate district attorney shall prosecute the individual or persons alleged to have violated a section or sections of this Article.

(d) As a condition of probation, a sentencing judge may order that the costs incurred by the State Board of Elections in investigating and aiding the prosecution of a case be paid to the State Board of Elections by the defendant on such terms and conditions as set by the judge."

SECTION 7.(b) G.S. 163-278.14 reads as rewritten:

"(a) No individual, political committee, or other entity shall make any contribution anonymously or in the name of another. No candidate, political committee, referendum committee, political party, or treasurer shall knowingly accept any contribution made by any individual or person in the name of another individual or person or made anonymously. If a

candidate, political committee, referendum committee, political party, or treasurer receives anonymous contributions or contributions determined to have been made in the name of another, he shall pay the money over to the Board, by check, and all such moneys received by the Board shall be deposited in the Civil Penalty and Forfeiture Fund of the State of North Carolina. This subsection shall not apply to any contribution by an individual with the lawful authority to act on behalf of another individual, whether through power of attorney, trustee, or other lawful authority."

SECTION 7.(c) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 8. In order to foster and facilitate transparency of information relating to political campaigns, the State Board of Elections shall create an easily searchable database to provide any member of the public with access to the database to search by geographic location, occupation, employer, contributor, or contributee, within an election cycle and over a period of time as specified by the searcher.

SECTION 9. Article 2 of Chapter 143C of the General Statutes is amended to add new sections to read:

"**§ 143C-2-5. Grants and contracts database.**

(a) The Director of the Budget shall require the Office of State Budget and Management, with the support of Information Technology Services, to build and maintain a database and website for providing a single, searchable website on State spending for grants and contracts.

(b) Heads of the principal departments as listed in G.S. 143B-6 shall monthly conduct a review of all State contracts and grants administered by the principal department.

(c) All State institutions, departments, bureaus, agencies or commissions subject to the authority of the Director of the Budget that maintain a website shall be required to include an access link to the NC OpenBook website on the homepage of the agency website. Each agency shall also prominently display a search engine on the agency website homepage to allow for ease of searching for information, including contracts and grants, on the agency's website.

"**§ 143C-2-6. Contents of database and website.**

(a) The Office of State Controller, the Department of Administration, and Information Technology Services shall provide the Office of State Budget and Management with the statewide information on state contracts necessary for the development and maintenance of the database and website required by this Article, with the information updated at least every 30 days.

(b) The Office of State Budget and Management shall work with the Office of the State Auditor and the Grant Information Center to incorporate data on grants into the database and website required by this Article. All State institutions, departments, bureaus, agencies or commissions subject to the authority of the Governor shall make necessary changes to existing reporting processes to for grants and contracts to ensure the goals of this Article are met.

(c) All State contracts and grants awarded in amounts in excess of ten thousand dollars ($10,000.00) shall be included in the database and website required by this Article. The following information shall be provided for each contract or grant:

(1) The name of the entity receiving the award.

(2) The amount of the award or estimated award.

(3) Information on the award, including transaction type, funding agency, duration of contract or grant award.

(4) The location of the entity receiving the award.

(5) Background information on the entity receiving the award.

(6) Timelines for anticipated completion of the work required.

(7) Expected outcomes of the contract or grant and specific deliverables required.

(8) Contact information for the responsible state government officer or administrator of the contract or grant.

SECTION 10. G.S. 138A-3(30) reads as rewritten:

"(30) Public servants. – All of the following:

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

b. Employees of the Office of the Governor.

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

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

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

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

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

h. Judicial employees.

i. All voting members of boards, including ex officio members, permanent designees of any voting member, and members serving by executive, legislative, or judicial branch appointment.

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

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

l. Members of the ~~Commission.~~Commission, the executive director, and the assistant executive director of the Commission.

m. Individuals under contract with the State working in or against a position included under this subdivision.

n. The director of the Office of State Personnel.

o. The State Controller.

p. The chief information officer, deputy chief information officers, chief financial officers, and general counsel of the Office of Information Technology.

q. The director of the State Museum of Art.

r. The executive director of the Agency for Public Telecommunication.

s. The Commissioner of Motor Vehicles.

t. The Commissioner of Banks, and the chief deputy commissioners of the Banking Commission.

u. The executive director of the North Carolina Housing Finance Agency.

v. The executive director, chief financial officer, and chief operating officer of the North Carolina Turnpike Authority."

SECTION 11. G.S. 143B-478 is amended by adding a new subsection to read::

"(f) The Commission shall be treated as a board for purposes of Chapter 138A of the General Statutes."

SECTION 12. G.S. 138A-22 is amended by adding a new subsection to read:

"(d1) In addition to subsections (a) and (d) of this section, a covered person holding elected office or a former covered person who held elected office subject to this Article shall file a statement of economic interest in all of the following instances, as specified:

(1) Filed on or before April 15 of the year following the year a covered person elects not to continue in the position making that individual a covered person, with all information provided in the statement of economic interest current as of the last day of December of the preceding year.

(2) Filed on or before April 15 of the year following the year the covered person resigns from the position making that individual a covered person, with all information provided in the statement of economic interest current as of the last day in the position.

(3) Filed on or before April 15 of the year following the year the covered person dies while holding the position that made the deceased a covered person, with all information provided in the statement of economic interest current as of the day of death. The statement of economic interest shall be filed by the personal representative of the estate."

SECTION 13.(a) G.S. 138A-24(a) reads as rewritten:

"**§ 138A-24. Contents of statement.**

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

(1) Except as otherwise provided in this subdivision, the name, current mailing address, occupation, employer, and business of the filing person. Any individual holding or seeking elected office for which residence is a qualification for office shall include a home address. A judicial officer may use a current mailing address instead of the home address on the form required in this subsection. The judicial officer may also use the initials instead of the name of any unemancipated child of the judicial officer who also resides in the household of the judicial officer. If the judicial officer provides the initials of an unemancipated child, the judicial officer shall concurrently provide the name of the unemancipated child to the Commission. The name of an unemancipated child provided by the judicial officer to the Commission shall not be a public record under Chapter 132 of the General Statutes and is privileged and confidential.

(2) A list of each asset and liability included in this subdivision of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars ($10,000) owned by the filing person and the filing person's immediate family, except assets or liabilities held in a blind trust. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the filing person or the filing person's immediate family, including descriptions adequate to determine the location by city and county of each parcel.

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

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

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

e. The name of each publicly owned company. For purposes of this sub-subdivision, the term "publicly owned company" shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

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

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

f. The name of each nonpublicly owned company or business entity, including interests in sole proprietorships, partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations.

g. For each company or business entity listed under sub-subdivision f. of this subdivision, if known, a list of any other companies or business entities in which the company or business entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000).

~~h. A list of all nonpublicly owned businesses of which the filing person and the filing person's immediate family is an officer, employee, director, partner, owner, or member or manager of a limited liability company.~~

i. For any company or business entity listed under sub-subdivisions f., g., and h. of this subdivision, if known, any company or business entity that has any material business dealings, contracts, or other involvement with the State, or is regulated by the State, including a brief description of the business activity.

j. For a vested trust created, established, or controlled by the filing person of which the filing person or the members of the filing person's immediate family are the beneficiaries, excluding a blind trust, the name and address of the trustee, a description of the trust, and the filing person's relationship to the trust.

k. A list of all liabilities, excluding indebtedness on the filing person's primary personal residence, by type of creditor and debtor.

l. Repealed by Session Laws 2007-348, s. 34. See Editor's note for effective date.

m. A list of all stock options in a company or business not otherwise disclosed on this statement.

(3) The name of each source (not specific amounts) of income of more than five thousand dollars ($5,000) received during the previous year by business or industry type, if that source is not listed under subdivision (2) of this subsection. Income shall include salary, wages, professional fees, honoraria, interest, dividends, rental income, and business income from any source other than capital gains, federal government retirement, military retirement, or social security income.

(4) If the filing person is a practicing attorney, an indication of whether the filing person, or the law firm with which the filing person is affiliated,

earned legal fees during the past year in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

a. Administrative law.
b. Admiralty law.
c. Corporate law.
d. Criminal law.
e. Decedents' estates law.
f. Environmental law.
g. Insurance law.
h. Labor law.
i. Local government law.
j. Negligence or other tort litigation law.
k. Real property law.
l. Securities law.
m. Taxation law.
n. Utilities regulation law.

(5) Except for a filing person in compliance under subdivision (4) of this subsection, if the filing person is a licensed professional or provides consulting services, either individually or as a member of a professional association, a list of categories of business and the nature of services rendered, for which payment for services were charged or paid during the past year in excess of ten thousand dollars ($10,000).

(6) An indication of whether the filing person, the filing person's employer, a member of the filing person's immediate family, or the immediate family member's employer is licensed or regulated by, or has a business relationship with, the board or employing entity with which the filing person is or will be associated. This subdivision does not apply to a legislator, a judicial officer, or that legislator's or judicial officer's immediate family.

(7) A list of societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction, in which the public servant or a member of the public servant's immediate family is a director, officer, or governing board member. This subdivision does not apply to a legislator, a judicial officer, or that legislator's or judicial officer's immediate family.

(8) A list of all things with a total value of over two hundred dollars ($200.00) per calendar quarter given and received without valuable consideration and under circumstances that a reasonable person would conclude that the thing was given for the purpose of lobbying, if such things were given by a person not required to report under Chapter 120C of the General Statutes, excluding things given by a member of the filing person's extended family. The list shall include only those things received during the 12 months preceding the reporting period under subsection (d) of this section, and shall include the source of those things. The list required by this subdivision shall not apply to things of monetary value received by the filing person prior to the time the filing person filed or was nominated as a candidate for office, as described in G.S. 138A-22, or was appointed or employed as a covered person.

(9) A list of any felony convictions of the filing person, excluding any felony convictions for which a pardon of innocence or order of expungement has been granted.

(10) Any other information that the filing person believes may assist the Commission in advising the filing person with regards to compliance with this Chapter.

(11) A list of any nonprofit corporation or organization with which associated during the preceding calendar year, including a list of which of those nonprofit corporations or organizations with which associated do business with the State or receive State funds and a brief description of the nature of the business, if known or with which due diligence could reasonably be known.

(12) A statement of whether the filing person or the filing person's immediate family is or has been a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes within the preceding 12 months.

(13) The name of each business with which associated that the filing person or filing person's immediate family is an employee, director, officer, partner, proprietor, or member or manager."

SECTION 13.(b) G.S. 138A-24(c) reads as rewritten:

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

SECTION 13.(c) G.S. 138A-24(a)(2)i. is recodified as G.S. 138A-24(a)(14).

SECTION 13.(d) G.S. 138A-24(a)(14), as enacted by Section 13(c) of this act, reads as rewritten:

"(14) For any company or business entity listed under subdivision (13) of this subsection and sub-subdivisions ~~f., g., and h.~~f. and g. of subdivision (2) of this ~~subdivision,~~subsection, if known, a statement whether ~~any~~that company or business entity ~~that~~ has any material business ~~dealings, contracts, or other involvement~~ business contracts with the State, or is regulated by the State, including a brief description of the business activity."

SECTION 13.(e) This section becomes effective January 1, 2011, and applies to statements of economic interest filed on or after that date.

SECTION 14. G.S. 138A-41 reads as rewritten:

"**§ 138A-41. Other ethics standards.**

(a) Nothing in this Chapter shall prevent the Supreme Court, the Committee, the Legislative Services Commission, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, or other boards from adopting additional or supplemental ethics standards applicable to that public agency's operations.

(b) The Governor, as a constitutional officer of the State, shall have the authority to adopt additional and supplemental ethics standards applicable to any appointee of the Governor to any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, whether advisory or non-advisory in authority. If the Governor adopts such ethics standards, the standards shall be published in the North Carolina Register and made available to each appointee subject to the ethics standards.

(c) The Governor, as a constitutional officer of the State, shall have the authority to adopt minimum ethics standards applicable to any employee of a State agency. If the Governor adopts such standards, the ethics standards shall be published in the North Carolina Register and made available to each employee subject to the ethics standards."

SECTION 15.(a) G.S. 120C-303(a) reads as rewritten:

"(a) Except as provided in subsection (b) of this section, no lobbyist or lobbyist principal may do any of the following:

(1) Knowingly give a gift to a designated individual.

(2) Knowingly give a gift with the intent that a designated individual be ~~the~~ an ultimate recipient."

SECTION 15.(b) 138A-32(c) reads as rewritten:

"(c) No public servant, legislator, or legislative employee shall knowingly accept a gift from a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes. No legislator or legislative employee shall knowingly accept a gift from liaison personnel designated under Chapter 120C of the General Statutes. No public servant, legislator, or legislative employee shall accept a gift knowing all of the following:

(1) The gift was obtained indirectly from a lobbyist, lobbyist principal, or liaison personnel registered under Chapter 120C of the General Statutes.

(2) The lobbyist, lobbyist principal, or liaison personnel registered under Chapter 120C of the General Statutes intended for ~~the~~ an ultimate recipient of the gift to be a public servant, legislator, or legislative employee as provided in G.S. 120C-303."

SECTION 15.(c) G.S. 138A-32(d1) reads as rewritten:

"(d1) No public servant shall accept a gift knowing all of the following:

(1) The gift was obtained indirectly from a person described under subdivisions (d)(1), (2), and (3) of this section.

(2) The person described under subdivisions (d)(1), (2), and (3) of this section intended for ~~the~~ an ultimate recipient of the gift to be a public servant."

SECTION 15.(d) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 16. G.S. 120C-101(c) reads as rewritten:

"(c) In adopting rules under this Chapter, the Commission is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes, except that the Commission shall comply with G.S. 150B-21.2(d). At least 30 business days prior to adopting a rule, the Commission shall:

(1) Publish the proposed rules in the North Carolina Register.

(2) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet to be posted within five business days.

(3) Notify those on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a rule and of the public hearing.

(4) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.

(5) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted under this subsection becomes effective the first day of the month following the month the final rule is submitted to the Codifier of Rules for entry into the North Carolina Administrative ~~Code.~~Code, and applies prospectively. A rule adopted by the Commission that does not comply with the procedural requirements of this subsection shall be null, void, and without effect. For purposes of this subsection, a rule is any Commission regulation, standard, or statement of general applicability that interprets an enactment by the General Assembly Congress, or a regulation adopted by a federal agency, or that describes the procedure or practice requirements of the Commission."

SECTION 17.(a) G.S. 120C-100(a)(9) reads as rewritten:

"(9) Lobby or Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that designated individual's immediate family.

b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that designated individual's immediate family with the intention of influencing current or future legislative or executive action, or both.

The ~~term~~ terms "lobby" or "lobbying" ~~does~~ do not include communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both."

SECTION 17.(b) G.S. 120C-100(a)(10) reads as rewritten:

"(10) Lobbyist. – An individual who engages in lobbying for payment and meets any of the following criteria:

a. Repealed by Session Laws 2007-348, s. 8(a), effective October 10, 2007.

b. Represents another person or governmental unit, but is not directly employed by that person or governmental ~~unit, and receives payment for services.~~unit. ~~For the purposes of this sub-subdivision, the term "payment for services" shall not include reimbursement of actual travel and subsistence.~~

c. Contracts for ~~economic consideration~~ payment for ~~the purpose of~~ lobbying.

d. Is employed by a person and a significant part of that employee's duties include lobbying. In no case shall an employee be considered a lobbyist if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)a. of this section or if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)b. of this section.

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700 or registered as liaison personnel under Article 5 of this Chapter."

SECTION 17.(c) G.S. 120C-100(a)(11) reads as rewritten:

"(11) Lobbyist principal and principal. – The person or governmental unit on whose behalf the lobbyist ~~lobbies.~~lobbies and who makes payment for the lobbying. In the case where a lobbyist is ~~compensated~~ paid by a law firm, consulting firm, or other entity retained by a person or governmental unit for lobbying, the principal is the person or governmental unit who makes payment and whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist principal is the association or other organization, not the individual members of the association or other organization.

The term "lobbyist principal" shall not include those designating registered liaison personnel under Article 5 of this Chapter."

SECTION 17.(d) G.S. 120C-100(a)(11k) reads as rewritten:

"(11k) ~~Payment for services.~~Payment. – Any money, thing of value, or economic benefit ~~paid~~ conveyed to ~~a~~ the lobbyist for ~~the purpose of lobbying~~ lobbying, other than reimbursement of actual travel, administrative expenses, or subsistence."

SECTION 17.(e) G.S. 120C-100(a)(13) reads as rewritten:

"(13) Solicitation of others. – A solicitation of members of the public to communicate directly with or contact one or more designated individuals ~~for the purpose of influencing or attempting~~ to influence or attempt to influence legislative or executive action to further the solicitor's position on that legislative or executive action, when that request is made by any of the following methods:

a. A broadcast, cable, or satellite transmission.

b. An e-mail communication or a Web site posting.

c. A communication delivered by print media as defined in G.S. 163-278.38Z.

d. A letter or other written communication delivered by mail or by comparable delivery service.

e. Telephone.

f. A communication at a conference, meeting, or similar event.

The term "solicitation of others" does not include communications made by a person or by the person's agent to that person's stockholders, employees, board members, officers, members, subscribers, or other recipients who have affirmatively assented to receive the person's regular publications or notices."

SECTION 17.(f) G.S. 120C-300 reads as rewritten:

"**§ 120C-300. Contingency fees prohibited.**

(a) No individual shall act as a lobbyist ~~for~~ and receive payment for ~~services~~ lobbying that is dependent upon the result or outcome of any legislative or executive action.

(b) This section shall not apply to an individual doing business with the State who is engaged in sales with respect to that business with the State whose regular remuneration agreement includes commissions based on those sales. For purposes of this subsection, the term "regular remuneration" means any money, thing of value, or economic benefit conferred on or received by the individual in return for services rendered or to be rendered by that individual or another.

(c) Any payment ~~for services~~ to a lobbyist in violation of this section is subject to forfeiture and shall be paid into the Civil Penalty and Forfeiture Fund."

SECTION 17.(g) G.S. 120C-305 reads as rewritten:

"**§ 120C-305. Prohibition on the use of cash or credit of the lobbyist.**

No lobbyist or another acting on the lobbyist's behalf shall ~~permit~~lobby by permitting a designated individual, or that designated individual's immediate family member, to use the cash or credit of the lobbyist ~~for the purpose of lobbying~~ unless the lobbyist is in attendance at the time of the reportable expenditure. G.S. 120C-303 applies to this section."

SECTION 17.(h) G.S. 120C-400(a) reads as rewritten:

"**§ 120C-400. Reporting of reportable expenditures.**

(a) For purposes of this Chapter, all reportable expenditures made for ~~the purpose of~~ lobbying shall be reported, including the following:

(1) Reportable expenditures benefiting or made on behalf of a designated individual in the regular course of that designated individual's employment.

(1a) Reportable expenditures benefiting or made on behalf of a designated individual's immediate family member in the regular course of that immediate family member's employment.

(2) Contractual arrangements or direct business relationships between a lobbyist or lobbyist principal and a designated individual, or that designated individual's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Reportable expenditures reimbursed to a lobbyist in the ordinary course of business by the lobbyist principal or other employer."

SECTION 17.(i) G.S. 120C-402(b) reads as rewritten:

"(b) The report shall include all of the following for the reporting period:

(1) All reportable expenditures made for ~~the purpose of~~ lobbying.

(2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars ($3,000).

(3) Reportable expenditures reimbursed by the lobbyist principal, or another person or governmental unit on the lobbyist principal's behalf.

(4) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9), 138A-32(e)(11), 138A-32(e)(12), and all gifts given under G.S. 138A-32(e)(10) with a value of more than ten dollars ($10.00)."

SECTION 17.(k) G.S. 120C-403 reads as rewritten:

"**§ 120C-403. Lobbyist principal's reports.**

(a) Each lobbyist principal shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist principal.

(b) The report shall be filed whether or not reportable expenditures are made, shall be due ~~10~~15 business days after the end of the reporting period, and shall include all of the following for the reporting period:

(1) All reportable expenditures made for ~~the purpose of~~ lobbying.

(2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars ($3,000).

(3) Recodified as G.S. 120C-403(d).

(4) With respect to each lobbyist registered under G.S. 120C-206, reportable expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those reportable expenditures.

(5) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9), 138A-32(e)(11), 138A-32(e)(12), and all gifts given under G.S. 138A-32(e)(10) with a value of more than two hundred dollars ($200.00).

(6) With respect to each lobbyist registered under G.S. 120C-206, the name of each person or governmental unit not otherwise registered as a lobbyist principal for whom the lobbyist principal directs or permits the lobbyist to lobby, whether for payment or not.

(c) In addition to the reports required by this section, each lobbyist principal incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section.

(d) In addition to the reports required by this section, each lobbyist principal shall annually, in the last report of the registration period under G.S. 120C-200(d), report the total of all payments for lobbying and other activities described in subdivision (2) of subsection (e) of this section made during the registration period, as applicable:

(1) If a lobbyist represents the lobbyist principal, but is not directly employed by that lobbyist principal, the portion of the payment that is for lobbying and to whom it was paid.

(2) If a lobbyist is under contract with the lobbyist principal for lobbying, the portion of the contract that is reasonably allocated for lobbying.

(3) If a lobbyist is a full-time employee of the principal, or is paid by means of an annual fee or retainer, the principal shall estimate and report the portion of the salary, fee, or retainer salary that is reasonably allocated for lobbying.

(e) For purposes of subsection (d) of this section, the following shall apply:

(1) A lobbyist principal may rely upon a statement by the lobbyist estimating the portion of the salary or other payment that is reasonably allocated for lobbying.

(2) In addition to reporting any payment to a lobbyist for lobbying under subsection (d) of this section, a lobbyist principal shall report any payment to a lobbyist for any of the following communications and activities that were used to lobby within the registration period under G.S. 120C-200(d):

a. Research.

b. Drafting of written communications.

c. Monitoring of proposed or pending legislative action or executive action, including time spent preparing communications with the lobbyist principal to relate information on proposed or pending legislative action or executive action.

d. Time spent advising and rendering opinions to the lobbyist principal as to the construction and effect of proposed or pending legislative action or executive action.

(3) A lobbyist principal is required to report any payment to a lobbyist for any of the following:

a. Direct lobbying communications or direct lobbying activities with a designated individual or that designated individual's immediate family.

b. Communications or activities to develop goodwill, including the building or relationships, with a designated individual or that designated individual's immediate family member."

SECTION 17.(l) G.S. 120C-404(b)(1) reads as rewritten:

"(1) All reportable expenditures made for ~~the purpose of~~ lobbying during the reporting period."

SECTION 17.(m) G.S. 120C-501(e) reads as rewritten:

"(e) The Board of Governors of the University of North Carolina and its constituent institutions, or the liaison personnel designated by that board or the constituent institutions, shall not give, for ~~the purpose of~~ lobbying, athletic tickets to any designated individual, except for those who are described in G.S. 138A-3(30)j. or those who are students and receive tickets on the same basis as other students."

SECTION 17.(n) G.S. 120C-800(a) reads as rewritten:

"(a) If a designated individual accepts a reportable expenditure made for ~~the purpose of~~ lobbying with a total value of over two hundred dollars ($200.00) per calendar quarter from a person or group of persons acting together, exempted or not otherwise covered by this Chapter, the person, or group of persons, making the reportable expenditure shall report the date, a description of the reportable expenditure, the name and address of the person, or group of persons, making the reportable expenditure, the name of the designated individual accepting the reportable expenditure, and the estimated fair market value, or face value if shown, of the reportable expenditure."

SECTION 17.(o) G.S. 138A-3(1) reads as rewritten:

"(1) Blind trust. – A trust established by or for the benefit of a covered person or a member of the covered person's immediate family for ~~the purpose of~~ divestiture of all control and knowledge of assets. A trust qualifies as a blind trust under this subdivision if the covered person or a member of the covered

person's immediate family has no knowledge of the holdings and sources of income of the trust, the trustee of the trust is independent of and not associated with or employed by the covered person or a member of the covered person's immediate family and is not a member of the covered person's extended family, and the trustee has sole discretion as to the management of the trust assets."

SECTION 17.(p) G.S. 138A-3(15) reads as rewritten:

"(15) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, liaison personnel, or a person described under G.S. 138A-32(d)(1), (2), or (3). The following shall not be considered gifts under this subdivision:

a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.

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

c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for ~~the purpose of~~ lobbying.

d. Academic or athletic scholarships based on the same criteria as applied to the public.

e. Campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

f. Expressions of condolence related to a death of an individual, sent within a reasonable time of the death, if the expression is one of the following:

1. A sympathy card, letter, or note.
2. Flowers.
3. Food or beverages for immediate consumption.
4. Donations to a religious organization, charity, the State or a political subdivision of the State, not to exceed a total of two hundred dollars ($200.00) per death per donor."

SECTION 17.(q) G.S. 138A-13(f) reads as rewritten:

"(f) This section shall apply to judicial officers only for ~~the purpose of~~ advice related to Article 3 of this Chapter."

SECTION 17.(r) G.S. 138A-24(a)(8) reads as rewritten:

"(8) A list of all things with a total value of over two hundred dollars ($200.00) per calendar quarter given and received without valuable consideration and under circumstances that a reasonable person would conclude that the thing was given for ~~the purpose of~~ lobbying, if such things were given by a person not required to report under Chapter 120C of the General Statutes, excluding things given by a member of the filing person's extended family. The list shall include only those things received during the 12 months preceding the reporting period under subsection (d) of this section, and shall include the source of those things. The list required by this subdivision shall not apply to things of monetary value received by the filing person prior to the time the filing person filed or was nominated as a candidate for office, as described in G.S. 138A-22, or was appointed or employed as a covered person."

SECTION 17.(s) G.S. 138A-32(e)(10) reads as rewritten:

"(10) Gifts given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship provided all of the following conditions are met:

a. The relationship is not related to the public servant's, legislator's, or legislative employee's public service or position.

b. The gift is made under circumstances that a reasonable person would conclude that the gift was not given ~~for the purpose of lobbying.~~ to lobby."

SECTION 17.(t) This act is effective January 1, 2011, and applies to offenses committed on or after that date, and reports filed on or after that date.

SECTION 18.(a) G.S. 126-23 reads as rewritten:

"§ 126-23. Certain records to be kept by State agencies open to inspection.

(a) Each department, agency, institution, commission and bureau of the State shall maintain a record of each of its employees, showing the following information with respect to each such employee:

(1) ~~name,~~Name.

(2) ~~age,~~Age.

(3) ~~date~~Date of original employment or appointment to the State ~~service,~~service.

(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its ~~possession,~~possession.

(5) ~~current position,~~Current position.

(6) ~~title,~~Title.

(7) ~~current salary,~~Current salary.

(8) ~~date~~Date and amount of ~~most recent~~each increase or decrease in ~~salary,~~salary with that department, agency, institution, commission or bureau.

(9) ~~date~~Date of ~~most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification,~~classification with that department, agency, institution, commission or bureau.

(10) ~~and the~~The office or station to which the employee is currently assigned.

(b) For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Subject only to rules and regulations for the safekeeping of the records, adopted by the State Personnel Commission, every person having custody of such records shall permit them to be inspected and examined and copies thereof made by any person during regular business hours. Any person who is denied access to any such record for the purpose of inspecting, examining or copying the same shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 18.(b) G.S. 115C-320 reads as rewritten:

"§ 115C-320. Certain records open to inspection.

(a) Each local board of education shall maintain a record of each of its employees, showing the following information with respect to each employee:

(1) ~~name,~~Name.

(2) ~~age,~~Age.

(3) ~~date~~Date of original employment or ~~appointment,~~appointment.

(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the board has the written contract or a record of the oral contract in its ~~possession,~~possession.

(5) ~~current position,~~Current position.

(6) ~~title,~~Title.
(7) ~~current salary,~~Current salary.
(8) ~~date~~Date and amount of ~~most recent~~ each increase or decrease in ~~salary,~~ salary.
(9) ~~date~~Date of ~~most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification, and~~classification.
(10) ~~the~~The office or station to which the employee is currently assigned.

(b) For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Subject only to rules and regulations for the safekeeping of records adopted by the local board of education, every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours. The name of a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes shall not be open to inspection and shall be redacted from any record released pursuant to this section. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 18.(c) G.S. 115D-28 reads as rewritten:

"**§ 115D-28. Certain records open to inspection.**

(a) Each board of trustees shall maintain a record of each of its employees, showing the following information with respect to each employee:

(1) ~~name,~~Name.
(2) ~~age,~~Age.
(3) ~~date~~Date of original employment or ~~appointment,~~appointment.
(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the board has the written contract or a record of the oral contract in its ~~possession,~~possession.
(5) ~~current position,~~ Current position.
(6) ~~title,~~ Title
(7) ~~current salary,~~ Current salary.
(8) ~~date~~Date and amount of ~~most recent~~each increase or decrease in ~~salary,~~ salary.
(9) ~~date~~Date of ~~most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification, and~~classification.
(10) ~~the~~The office or station to which the employee is currently assigned.

(b) For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Subject only to rules and regulations for the safekeeping of records adopted by the board of trustees, every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 18.(d) G.S. 122C-158(b) reads as rewritten:

"(b) The following information with respect to each employee is a matter of public record:

(1) ~~name;~~ Name.
(2) ~~age;~~ Age.
(3) ~~date~~Date of original employment or appointment to the area ~~authority;~~authority.

(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its ~~possession;~~possession.

(5) ~~current position~~Current position.

(6) ~~title;~~ Title.

(7) ~~current salary;~~Current salary.

(8) ~~date~~Date and amount of ~~most recent~~each increase or decrease in ~~salary;~~ salary.

(9) ~~date~~ Date of ~~the most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification; and~~classification.

(10) ~~the~~ The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The area authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying during regular business hours, subject only to rules for the safekeeping of public records as the area authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue these orders."

SECTION 18.(f) G.S. 153A-98(b) reads as rewritten:

"(b) The following information with respect to each county employee is a matter of public record:

(1) ~~name;~~ Name.

(2) ~~age;~~ Age.

(3) ~~date~~ Date of original employment or appointment to the county ~~service;~~service.

(4) ~~the~~ The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the county has the written contract or a record of the oral contract in its ~~possession;~~possession.

(5) ~~current position~~Current position.

(6) ~~title;~~Title.

(7) ~~current salary;~~Current salary.

(8) ~~date~~Date and amount of ~~the most recent~~each increase or decrease in ~~salary;~~ salary.

(9) ~~date~~ Date of ~~the most recent~~each promotion, demotion, transfer, suspension, separation or other change in position ~~classification; and~~classification.

(10) ~~the~~ The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The board of county commissioners shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the board of commissioners may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

SECTION 18.(g) G.S. 160A-168(b) reads as rewritten:

"(b) The following information with respect to each city employee is a matter of public record:

(1) ~~name;~~ Name.
(2) ~~age;~~ Age.
(3) ~~date~~Date of original employment or appointment to the ~~service;~~service.
(4) ~~the~~ The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the city has the written contract or a record of the oral contract in its possession;
(5) ~~current position~~Current position.
(6) ~~title;~~Title.
(7) ~~current salary;~~Current salary.
(8) ~~date~~Date and amount of ~~the most recent~~each increase or decrease in ~~salary;~~ salary.
(9) ~~date~~Date of ~~the most~~each recent promotion, demotion, transfer, suspension, separation, or other change in position ~~classification; and~~classification.
(10) ~~the~~The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The city council shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the city council may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

SECTION 18.(h) G.S. 162A-6.1(b) reads as rewritten:

"(b) The following information with respect to each authority employee is a matter of public record:

(1) ~~name;~~ Name.
(2) ~~age;~~ Age.
(3) ~~date~~Date of original employment or appointment to the ~~service;~~service.
(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the authority has the written contract or a record of the oral contract in its ~~possession;~~possession.
(5) ~~current position~~ Current position.
(6) ~~title;~~ Title.
(7) ~~current salary;~~Current salary.
(8) ~~date~~Date and amount of ~~the most recent~~each increase or decrease in ~~salary;~~ salary.
(9) ~~date~~ Date of ~~the most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification; and~~classification.
(10) ~~the~~The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

SECTION 18.(i) This act becomes effective October 1, 2010.

SECTION 19.(a) G.S. 120C-600 is amended by adding a new subsection to read:

"(d) The Secretary shall publish annual statistics on complaints received and systematic reviews conducted under this section, including the number of systematic reviews, the number of complaints, the number of apparent violations of this Chapter referred to a district attorney, the number complaints dismissed, and the number and age complaints pending. Subject to the provisions of Chapter 132 of the General Statutes, the levy of all civil fines, including the amount of the fine and the identity of the person or governmental unit against whom it was levied, shall be a public record as defined in G.S. 132-1(a)."

SECTION 19.(b) G.S. 120C-601 is amended by adding a new subsection to read:

"(d) The Commission shall publish annual statistics on complaints, including the number of complaints, the number of apparent violations of this Chapter referred to a district attorney, the number of dismissals, and the number and age of complaints pending."

SECTION 20.(a) Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.3E. Mediation of public records disputes.**

(a) Voluntary Mediation. – The parties to a public records dispute under Chapter 132 of the General Statutes may agree at any time prior to filing a civil action under Chapter 132 of the General Statutes to mediation of the dispute under the provisions of this section. Mediation of a public records dispute shall be initiated by filing a request for mediation with the clerk of superior court in a county in which the action may be brought.

(b) Mandatory Mediation. – Subsequent to filing a civil action under Chapter 132 of the General Statutes, a person shall initiate mediation pursuant to this section. Such mediation shall be initiated no later than 30 days from the filing of responsive pleadings with the clerk in the county where the action is filed.

(c) Initiation of Mediation. – The Administrative Office of the Courts shall prescribe a request for mediation form. The party filing the request for mediation shall mail a copy of the request by certified mail, return receipt requested, to each party to the dispute. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(d) Mediation Procedure. – Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(e) Waiver of Mediation. – The parties to the dispute may waive the mediation required by this section by informing the mediator of the parties' waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting.

(f) Certification That Mediation Concluded. – Immediately upon a waiver of mediation under subsection (e) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The

mediator shall file the original of the certification with the clerk and provide a copy to each party.

(g) Time Periods Tolled. – Time periods relating to the filing of a claim or the taking of other action with respect to a public records dispute, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (f) of this section.

SECTION 20.(b) G.S. 7A-38.2(a) reads as rewritten:

"(a) The Supreme Court may adopt standards of conduct for mediators and other neutrals who are certified or otherwise qualified pursuant to G.S. 7A-38.1, 7A-38.3, 7A-38.3B, 7A-38.3D, 7A-38.3E, and 7A-38.4A, or who participate in proceedings conducted pursuant to those sections. The standards may also regulate mediator and other neutral training programs. The Supreme Court may adopt procedures for the enforcement of those standards."

SECTION 20.(c) G.S. 132-9 reads as rewritten:

"**§ 132-9. Access to records.**

(a) Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying, and the court shall have jurisdiction to issue such ~~orders.~~orders if the person has complied with G.S. 7A-38.3E. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(b) In an action to compel disclosure of public records which have been withheld pursuant to the provisions of G.S. 132-6 concerning public records relating to the proposed expansion or location of particular businesses and industrial projects, the burden shall be on the custodian withholding the records to show that disclosure would frustrate the purpose of attracting that particular business or industrial project.

(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court shall allow ~~the prevailing~~ a party seeking disclosure of public records who substantially prevails to recover its reasonable attorneys' fees if attributed to those public ~~records, unless the court finds the agency acted with substantial justification in denying access to the public records or the court finds circumstances that would make the award of attorneys' fees unjust.~~records. The court may not assess attorneys' fees against the governmental body or governmental unit if the court finds that the governmental body or governmental unit acted in reasonable reliance on any of the following:

(1) A judgment or an order of a court applicable to the governmental unit or governmental body.

(2) The published opinion of an appellate court, an order of the North Carolina Business Court, or a final order of the Trial Division of the General Court of Justice.

(3) A written opinion, decision, or letter of the Attorney General.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court shall assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs."

SECTION 20.(d) This act becomes effective October 1, 2010, and applies to actions filed on or after that date.

SECTION 21.(a) G.S. 138A-14(b) reads as rewritten:

"(b) The Commission shall ~~make~~ offer basic ethics education and awareness presentations to all public servants and their immediate staffs, upon their election, appointment, or employment, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant shall participate in an ethics presentation approved by the Commission within six months of the public servant's election, reelection, appointment, or employment, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate."

SECTION 21.(b) G.S. 138A-24(c2) is recodified as G.S. 138A-22(c2).

SECTION 21.(c) The catch line to G.S. 138A-37 of the General Statutes reads as rewritten:

"**§ 138A-37. Legislator participation in ~~official~~ legislative actions.**"

SECTION 21.(d) G.S. 138A-38(a)(6) and (7) read as rewritten:

"**§ 138A-38. Permitted participation exception.**

(a) Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may participate in an official action or legislative action under any of the following circumstances except as specifically limited:

....

(6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action because the covered person is disqualified from acting under ~~G.S. 130-36,~~ G.S. 138A-36, G.S. 138A-37, or this section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.

(7) When a public servant notifies the Commission in writing that the public ~~servant-judicial employee,~~ servant, or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals having legal authority to take an official action, and the public servant discloses in writing the circumstances and nature of the conflict of interest."

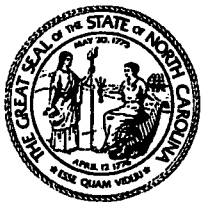
SECTION 21.(e) G.S. 120-104(c) reads as rewritten:

"(c) A legislator who acts in reliance on a formal advisory opinion issued by the Committee under this section shall be entitled to the immunity granted under ~~G.S. 138A-13(b).~~ G.S. 138A-13(b1)."

SECTION 21.(f) G.S. 120C-800(b) reads as rewritten:

"(b) If the person making the reportable expenditure in subsection (a) of this section is outside North Carolina, and the designated individual accepting the reportable expenditure is also outside North Carolina at the time the designated individual accepts the reportable expenditure, then the designated individual accepting the reportable expenditure shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with ~~G.S. 138A-24(a)(2).~~ G.S. 138A-24(a)(8)."

SECTION 22. Except as otherwise provided, this act is effective when it becomes law.



2009-2010 General Assembly

HOUSE BILL 961: Government Ethics and Campaign Reform Act of 2010

Committee:	Senate Judiciary I	**Date:**	June 22, 2010
Introduced by:	Reps. Glazier, Stam, Ross, Goodwin	**Prepared by:**	R. Erika Churchill Committee Counsel
Analysis of:	PCS to Third Edition H961-CSSTx-94		Denise Huntley Adams Research Staff

SUMMARY: ***The proposed committee substitute for House Bill 961 would make various changes to the campaign finance laws, public records laws, ethics laws, and lobbying laws.***

CURRENT LAW & BILL ANALYSIS:

North Carolina has two public campaign financing programs:

- A program that covers all nonpartisan elections for State Supreme Court and Court of Appeals, which was enacted in 2002 and used in the elections of 2004, 2006, and 2008.
- A program that covers partisan elections for three Council of State offices – Auditor, Commissioner of Insurance, and Superintendent of Public Instruction, which was used in the 2008 election.

In brief, both programs work as follows: Qualified candidates who agree to limits on private fundraising are eligible to receive public money to fund their camapgins. Candidates qualify for the program by pledging to abide by contribution and spending limits and by raising a certain amount in "qualifying contributions," small amounts given by individual voters. The basic public grants from the Fund do not come until after the primary, and with some exceptions the candidates are limited in their spending to the amount of those grants. If participating candidates are faced with opponents, in primary or general election, who spend more than the participating candidates can match, or independent expenditures or electioneering communications targeted at them beyond what they can spend, the Fund provides "matching funds" which are additional funds to match an opponent's expenditures and can be used by participating candidates to defend themselves. Candidates may opt out at any time, and repay the monies received from the Fund.

Both programs also require the State Board of Elections to produce and distribute a Voter Guide to as many voting-age NC residents as possible. The Voter Guide contains information about the affected elections and space for candidates to present themselves without cost.

Section 1 would add the Offices of Agriculture, Labor, Secretary of State, and State Treasurer to the Council of State offices eligible to participate in the Voter-Owned Elections program, effective 2012 and Section 2 would add the office of Attorney General effective for the 2016 election. Section 1(b) would impose various fees on certain activities of these offices, with the funds collected to be transferred to the Voter-Owned Election Fund. Section 1 becomes effective October 1, 2010 and Section 2 becomes effective July 1, 2015.

Sections 3 and 4. Revisions to criminal provisions

Section 3: Currently, it is unlawful for a State employee or a person appointed to non-elected State office to coerce political contributions or support from a State employee or applicant subject to the State Personnel Act by threatening discipline or promising preferential personnel treatment.

Section 3 would expand this provision by making it unlawful for a member of the Council of State to coerce political contributions or support by threatening discipline or promising preferential treatment to the following groups of people:

- Persons doing or seeking to do business with the Council of State member's department.
- Persons engaged in activities that are regulated or controlled by the Council of State member's department.
- Persons who have financial interests that may be substantially affected by the performance or nonperformance of the Council of State member's official duties.

A violation of this section is a Class 2 misdemeanor.

Section 4: Currently under G.S. 14-234, no public officer or employee involved in making or administering a contract on behalf of a public agency may solicit or receive a gift, reward, or promise of a reward in exchange for recommending, influencing, or attempting to influence the award of the contract. Section 4 would expand this by also prohibiting public officers and employees from soliciting or receiving favors, services, and promises of future employment.

Section 4 becomes effective December 1, 2010 and applies to offenses committed on or after that date.

Section 5. Revolving Door (House Bill 1136, Representatives Ross & Stam)

All agencies and constitutional officers of the State with staff must designate *liaison personnel* to lobby for legislative action. G.S. 120C-500(a). Liaison personnel, by definition, are employees of the State whose principal duties include lobbying legislators or legislative employees. G.S. 120C-100(a)(8). Liaison personnel must register and make reports with the Secretary of State and are subject to the gift ban. G.S. 120C-501.

Currently, the lobbying laws limit when certain people may register as a lobbyist.

- **Legislators-** No legislator or former legislator may register as a lobbyist:
  - While in office
  - Before the later of the close of session in which the legislator served or six months after leaving office. G.S. 120C-304 (a).
- **Constitutional Officers of the State-** Members of the Council of State may not register as a lobbyist while in office or within six months after leaving office. G.S. 120C-304 (b).
- **Heads of Principal State Departments-** Heads of all principal State departments who are appointed by the governor may not register as a lobbyist within six months after separation from employment as a public servant. G.S. 120C-304 (c). The principal departments include: Cultural Resources, Health and Human Services, Revenue, Crime Control and Public Safety, Correction, Environment and Natural Resources, Transportation, Administration, Commerce, Community Colleges System Office, and Juvenile Justice and Delinquency Prevention. G.S. 143B-6.

Section 5 would increase the revolving door time frame from the current six months to one year for legislators, Council of State members and principal department heads. The bill would limit all State agency employees from registering to lobby the agency that employee left for one year.

Section 5 becomes effective October 1, 2010, and applies to individuals leaving office or employment on or after that date.

Sections 6, 7, 8. Campaign Finance

Section 6: The State Board of Elections has the authority to prescribe and furnish certain statements required to be filed by candidates, committees, and county boards. Section 6 would authorize the State Board of Elections to hire or contract with a private investigator to investigate alleged violations of incorrect or unfiled statements filed by candidates, committees, and county boards.

Section 7: It is currently unlawful for an individual, political committee, or other entity to make a contribution anonymously or in the name of another. G.S. 163-278.14(a). It is also unlawful for corporations, business entities, labor unions, professional associations and insurance companies to make campaign contributions to candidates or political committees or to compensate, reimburse or indemnify an individual for money or property for making contributions or expenditures. G.S. 163-278.19(a). A violation of this section is a Class 2 misdemeanor.

Section 7 provides that a person who intentionally violates G.S. 163-278.14(a) or G.S. 163-278.19(a), and the unlawful contributions total more than $10,000 per election, is guilty of a Class I felony. This prohibition shall not apply to contributions by individuals with the lawful authority to act on behalf of another individual. This section becomes effective December 1, 2010 and applies to offenses committed on or after that date.

Section 8: Section 8 mandates that the State Board of Elections create an easily searchable database to provide any member of the public with access to the database to search by geographic location, occupation, employer, contributor, or contributee, within an election cycle and over a period of time as specified by the searcher.

Section 9. NC OpenBook

Section 9 codifies the Governor's Executive Order Number 4 to require the Office of State Budget and Management and Information Technology Services to build and maintain a single, searchable website and database on State spending for grants and contracts awarded in amounts in excess of $10,000. The following information provided for each contract or grant shall include: The name of the entity receiving the award; the amount of the award; the location of the entity receiving the award; expected outcomes of the contract or grant and specific deliverables required; and contact information for the responsible state government officer or administrator of the contract or grant.

Section 10 -14. Ethics Act revisions

Sections 10 and 11: Under current law, public servants include the Council of State, department heads, chief deputies, employees of the Office of the Governor, judicial employees, members of non-advisory boards, members of the Board of Governors, University boards of trustees, State Board of Community Colleges, and members of the boards of trustees of each community college. Public servants are covered by the State Government Ethics Act and are subject to the gift ban and are required to file an annual statement of economic interest.

Section 10 adds the following as public servants: the Executive Director and Assistant Executive Director of the State Ethics Commission; the director of the Office of State Personnel; the State Controller; the chief information officer, deputy chief information offices, chief financial officers, and general counsel of the Office of Information Technology; the director of the State Museum of Art; the executive director of the Agency for Public Telecommunication; the Commissioner of Motor Vehicles; the Commissioner of Banks, and the chief deputy commissioners of the Banking Commission; the executive director of the North Carolina Housing Finance Agency; and the executive director, chief financial officer, and chief operating officer of the North Carolina Turnpike Authority.

Section 11 adds the Governor's Crime Commission as a covered board, which means its members are public servants under the State Government Ethics Act.

Section 12: Currently, legislators, judicial officers and public servants are required to file a statement of economic interest upon election, appointment, or employment and annually thereafter. Candidates for legislative or constitutional offices are also required to file a statement of economic interest when filing for candidacy. Section 12 would also require a statement of economic interest to be filed on or before April 15th of the year following the year a covered person leaves office or dies in office.

Section 13: Section 13 makes various changes to the annual statement of economic interest required to be filed by covered persons.

- Removes the requirement that statements of economic interest be sworn.
- Adds sole proprietorships to the list of business entities that must be listed on the statement of economic interest.
- Clarifies that the statement of economic interest should include the name of each business with which the filing person or filing person's immediate family is an employee, director, officer, partner, proprietor, or member or manager, and identifies which of these businesses do business with the State.

Section 13 becomes effective January 1, 2011, and applies to statements of economic interest filed on or after that date.

Section 14: Section 14 authorizes the Governor to adopt additional and supplemental ethics standards applicable to any appointee of the Governor to any State board, commission or similar public body. It also authorizes the Governor to adopt minimum ethics standards applicable to any employee of a State agency. The Governor is required to publish the standards in the North Carolina Register and make them available to each appointee or employee subject to the standards.

Section 15 Gift Ban Clarification (Senate Bill 1255, Senator Goss)

Under current law, unless an exception to the gift ban applies, no lobbyist or lobbyist principal may knowingly give a gift to a legislator, legislative employee or public servant or give a gift with the intent that a legislator, legislative employee, or public servant be the ultimate recipient of the gift. Section 15 clarifies that an indirect gift can include gifts where a designated individual is not the sole recipient.

Section 15 becomes effective December 1, 2010, and applies to offenses committed on or after that date.

Section 16 Rule making for SEC (Senate Bill 1380, Senator Clodfelter)

Under current law, the State Ethics Commission is required to follow a truncated rule-making procedure when adopting a rule. At least 30 business days prior to adopting a rule, the Commission shall publish the proposed rule and notice of the hearing in the North Carolina Register, notify interested parties, accept comments, and hold a public hearing.

Section 16 states that a rule adopted by the Commission that does not comply with the above mentioned procedural requirements is null, void, and without effect. It also defines a rule is any Commission regulation, standard, or statement of general applicability that interprets an enactment by the General Assembly or Congress, a regulation adopted by a federal agency, or that describes the procedure or practice requirements of the Commission.

Section 17 Lobbyist Principal Reporting (Senate Bill 1299, Senator Goss)

Currently, the term 'lobbying' is defined as influencing or attempting to influence legislative or executive action, or both, through direct communications and activities with a designated individual or developing goodwill through communications or activities with designated individuals with the intention of influencing current or future legislative or executive action, or both. A lobbyist is currently defined as an individual who is hired to engage in lobbying and meets certain criterion and a lobbyist principal is currently defined as a person or governmental unit on whose behalf a lobbyist lobbies.

Section 17 clarifies the definition of lobbyist so that the relationship between a lobbyist and a lobbyist principal is triggered only when the relationship includes payment. Section 17 changes the definition of a lobbyist to an individual who engages in lobbying **for payment** and meets certain criterion. Section 17 also makes corresponding changes to the definition of lobbyist principal to clarify that a lobbyist principal is a person or governmental unit on whose behalf a lobbyist lobbies **and who makes payment for that lobbying.** Section 17 also sets out what information about the payment is to be reported by the lobbyist principal annually.

Section 17 becomes effective January 1, 2011, and applies to offenses committed on or after that date, and reports filed on or after that date.

Section 18 Personnel Records

Personnel files of State and local government employees are confidential and cannot be released, except for certain items of information which must be maintained as separate public records. Generally, the items that may be released as public records are: name; age; date of original employment or appointment; current position; title; current salary; date and amount of most recent increase or decrease in salary; date of most recent promotion, demotion, transfer, suspension, separation or other change in position classification; and office or station to which the employee is currently assigned. Similar statutes govern the personnel records of: local boards of education, community colleges, area mental health authorities, State employees, public health authorities, counties, cities, and water and sewer authorities.

Section 18 would also require release of the date and amount of each salary change, and the date of each promotion, demotion, transfer, suspension, separation or other change in position classification.

Section 18 becomes effective October 1, 2010.

Section 19 Penalties of SEC and SOS published

Under current law, the Legislative Ethics Committee is required to publish annually statistics on the number of complaints filed, considered, dismissed, resulting in admonishment, referred to the appropriate house for appropriate action, referred for criminal prosecution and the number and age of complaints pending action by the Legislative Ethics Committee.

Section 19 requires the Secretary of State and the State Ethics Commission to publish similar annual statistics for complaints of violations of the lobbying law.

All civil fines, including the amount of the fine and the identity of the person or governmental unit against whom it was levied, shall be public record.

Section 20 Mediation of public records disputes.

Section 20 amends the access to public records law by requiring mediation of public records disputes. Mediation may be initiated prior to suit being filed, or within 30 days from the filing of responsive pleadings with the clerk.

Mediation is initiated by filing a request for mediation with the clerk of court in a county in which the action may be brought. The mediation shall be conducted in accordance with the standards for mediated settlements of civil cases. Mediation may be waived if all parties agree and the mediator is so informed in writing. At the conclusion of mediation, the mediator shall prepare and file a certification stating the date on which the mediation was concluded and the general results of the mediation.

If a party successfully compels the disclosure of public records, the court shall allow a party seeking disclosure of public records who substantially prevails to recover its reasonable attorneys' fees. The court may not assess attorneys' fees against a governmental body or governmental unit if the court finds the governmental body or governmental unit acted in reasonable reliance on a court order, appellate decision, or opinion of the Attorney General.

Section 20 becomes effective October 1, 2010, and applies to actions filed on or after that date.

Section 21 Technical corrections (Senate Bill 1239, Senator Goss)

Section 21 makes various technical and clarifying changes to the State Government Ethics Act and Lobbying laws.

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.

H961-SMST-83(CSSTx-94) v11

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 961 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.) Brunstetter
(Sen.)

moves to amend the bill on page 14, line 37

( ) WHICH CHANGES THE TITLE

by [illegible]

inserting "or for cause" between "voluntary"

and "separation";

and on page 14, line 41 by inserting

"or for cause" between "voluntary" and "separation".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 961 DATE June 22, 2010

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

COMMITTEE SUBSTITUTE ✓

Rep.) Brunstetter
)
Sen.)

moves to amend the bill on page 1, line 19

( ) WHICH CHANGES THE TITLE

by

through page 13 line 31

by deleting those lines;

by amending the title on page 1, lines 2-4, be deleting the portion of the title beginning with the word "STRENGTHEN" and ending with the word "STATE";

and by renumbering the bill sections accordingly.

SIGNED _____

ADOPTED _____ FAILED X/ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 961 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) Brunstetter

moves to amend the bill on page 9, line 5

( ) WHICH CHANGES THE TITLE

by inserting "clear and convincing" between "providing" and "evidence".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 961 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.) Brunstetter
Sen.)

moves to amend the bill on page 14, line 37

( ) WHICH CHANGES THE TITLE

by [illegible]

inserting "or for cause" between "voluntary"

and "separation";

and on page 14, line 41 by inserting

"or for cause" between "voluntary" and "separation":

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 961

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

H961-AST-138 [v.1]

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

Date _____,2010

Senator Stevens

moves to amend the bill on page 28, line 9 and on page 32, line 1 and on page 34, line 4 by deleting "act" and substituting "section".

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. 961 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.) Stevens

Sen.)

moves to amend the bill on page 2, line 7

( ) WHICH CHANGES THE TITLE

by inserting "Attorney General" between "of" and "Secretary";

on page 2, lines 9-10 by rewriting those lines to read: "held in 2012 and thereafter.";

on page 2, lines 49 by inserting "Attorney General," between "Auditor," and "Secretary";

on page 13, lines 25-31 by deleting those lines.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 961

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

H961-AST-137 [v.1]

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

Date _____,2010

Senator _____

moves to amend the bill on page 13, line 32 by rewriting that line to read:

"**SECTION 3.(a)** G.S. 126-14 reads as rewritten:";

and on page 14, lines 6-7, by inserting the following between those lines:

"**SECTION 3.(b)** This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.";

and on page 21, line 21 by deleting the phrase "for the purpose of concealing" and substituting the phrase "~~for the purpose of concealing~~with the intent to conceal".

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. 961 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.) Clodfelter
Sen.)

moves to amend the bill on page 33, line 8-9

( ) WHICH CHANGES THE TITLE

by inserting the following between those lines:

"(h) Nothing in this section shall be construed to limit any party's authority to seek or the timing of seeking, injunctive or other relief pursuant to Chapter 132 of the General Statutes."."

SIGNED Daniel G. Clodfelter

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

JUDICIARY I COMMITTEE REPORT
Senator Martin L. Nesbitt, Jr., Chair

Tuesday, June 22, 2010

Senator NESBITT, JR.,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2) **961** Pay to Play Regulation.

Draft Number:	30530
Sequential Referral:	None
Recommended Referral:	Finance
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 22, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
THERESA El-Amin	Democracy NC
ED KING	" "
Alexander Kotrovez	NC WARN
Tony Shirk	NC SAVES ENERGY
Ehrick Solenzio	Nationwide Ins
Sherman McCoy	Nationwide
Hinton Pointon	NCRMA
Leslie Conan	Capitol
Lucia Messina	Democracy NC
Juanita Milbourne	Democracy NC
Tom Marchner	Democracy NC

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 22, 2010 10 a.m. . Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
JENNIFER L. FRYE	DEMOCRACY NC 1821 GREEN ST DURHAM 27705
JARARI BLACKMON	DEMOCRACY NC
Linda Tableman	Moore County League of Women Voters
Ann Torok	League of Women Voters of Moore Co.
Haley Haynes	N.C. Dept. of Secretary of State
Joel Brown	" " " " " "
Karen Dvquette	Civitas
John Brubaker	Astra Zeneca
Barbara Conoles	BSCC
Wrathchy Rose	Hunton Williams
Pete MacDonald	NC WAGN

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 22, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Cameron Hunley	Electricities of NC
Chris Hoge	Civitas
Daniel Brown	Troutman Sanders
Shaunee Morgan	Democracy NC
Will Polk	Gov Office
Ben Kuhn	NC3
Chip Kullman	Nelson Mullins

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 22, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
John Hammond	848 Fearrington Post Pittsboro NC 27312 Voter Owned Elections
Allison Calder	Paulatics
Paula A. Wolf	NC Coalition on Govt + Lobbying Reform
John Hardin	MFAS
John McMillan	MFAS
Mark Monsky	Democracy NC
PAIGE WORSHAM	SCHOOL OF GOVERNMENT
Carolyn Jones CONNOR	League of Women Voters. Catawba County
SARAH W. Huffman	League of Women Voters of Catawba County
MARVIN C. ARRINGTON	Democracy NC
Jennifer Mahan	38 Charter Ct. Apex NC

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 22, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Butch Gunnells	NC Beverage A
Paul [illegible]	NCBA
Amelia Thompson	State Ethics Comm.
A. Solari	DST
David Starling	DST
Bob Hall	Democracy NC
Jane Pinsley	NCC LGR
P. Pi [illegible]	[illegible]
Cristina Chenb	Democracy NC
Melissa Price	NC Voters for Clean Elections Democracy NC
Jerimee Richir	Democracy NC
Kate Binion	NCDOR

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 22, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Henry Hutaff	Coca Cola

PAGES ATTENDING

Date: 6-22

Committee: Judiciary I **Room:** 1027LB 10 AM

PLEASE PRINT LEGIBILY!!!!!

Page Name	Hometown	Sponsoring Senator
1 Lauren Bateman	Raleigh	Stein
2 Jane Smith	Chapel Hill	Kinnaird
3 Kelly Archer	carrboro	Kinnaird
Deirdre Curran	Chapel Hill	Kinnaird
5 Davis Mitchell	Cary	Stein
6 Sydney Griffin	Forest City	Basnight
7 Curt Koone	Union Mills	Basnight
8 Katie Yelton	Rutherfordton	Basnight
9		

Do not add additional names below the grid.

Pages: Please present this form to either the Committee Clerk at the meeting or a Sgt. at Arms.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

MINUTES

June 24, 2010
Room 1027
Legislative Building
10a.m.

Welcome and Attendance

The Senate Judiciary I Committee met Thursday, June 24, 2010 in Room 1027 of the Legislative Building. Committee Chairman Martin Nesbitt presided, calling the meeting to order at 9:10 a.m.

In attendance with Chairman Nesbitt were Committee Vice Chairman Dan Clodfelter, Vice Chairman Pete Brunstetter, and Vice Chairman Josh Stein. Also present were members Senator Charlie Albertson, Senator Dan Blue, Senator Andrew Brock, Senator Harry Brown, Senator Malcolm Graham, Senator David Hoyle, Senator Clark Jenkins, Senator Ellie Kinnaird, Senator Floyd McKissick, Senator David Rouzer, Senator Richard Stevens and Senator Jerry Tillman. Staff present was Committee Counsel Erika Churchill, Giles Perry, Bill Patterson and Committee Assistant Jessica Kozma Proctor.

House Bill 1398

House Bill 1398, Short Titled "Determining Senior Resident Sup Ct. Judge" was the first Bill of the day's discussion. A Proposed Committee Substitute was distributed to members and adopted for discussion by a motion by Vice Chairman Brunstetter. A copy of this PCS may be found at:
http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H1398v2.pdf

Vice Chairman Stein offered an amendment, the amendment read as follows: "Senator Stein moves to amend the Bill on Page 1, Line 18 by adding after the period the following: 'In exercising the authority to appoint senior resident court judges pursuant to this subdivision, the Chief Judge shall consider the seniority, experience and management competence of the regular resident superior court judges. In addition, the Chief Justice shall consult with the regular resident superior court judges, the chief district court judges, the members of the district bar, the clerks of court, district attorneys, and public defenders within the district.'"

A second amendment was offered by Senator Berger. The amendment reads: "Sen. Berger moves to amend the Bill on Page 2, Lines 6-8 by rewriting those lines

to read: 'serve as senior resident superior court judge until that judge vacates the seat. The remainder of this becomes effective when it becomes law.'"

Before voting on the two amendments, discussion ensured. Senator McKissick requested of the Chairman to hold the Bill for "one day." Chairman Nesbitt said although the Bill could be held, there was not a lot of time left in session to postpone the reporting and further consideration of the bill. Senator Linda Garrou was called by Chairman Nesbitt to explain the Bill.

Senator Garrou explained that the bill amends a current statute regarding the determination of senior resident superior court judges; authorizing the Chief Justice of the Supreme Court to designate on of the judge as senior resident judge. This judge serves at the pleasure of the Chief Justice. The Bill also authorizes federal district court judges to perform marriages during a specified period.

Chairman Nesbitt called for votes on the amendments offered by Senators Stein and Berger. With no discussion both amendments passed by unanimous vote.

With no more discussion Senator Stein moved for favorable report, unfavorable as to original Bill; the Bill is given favorable report by unanimous vote.

House Bill 961

Chairman Nesbitt moved to House Bill 961, "Pay to Play" legislation. A PCS was distributed to members and adopted for discussion by a motion by Senator Clodfelter.

Vice Chairman Clodfelter offered an amendment to the PCS. The amendment reads: "Senator Clodfelter moves to amend the Bill on Page 1, Lines 2-4 by rewriting those lines to read: 'An act to provide limits on the trading of;' and on Page 1, Line 19 through Page 13, Line 34 by deleting those lines and renumbering the remaining Bill sections accordingly."

Discussion ensued among members. Senator Tillman raised continued concerns about partisanship regarding the Bill. Senator Blue told the Committee that he "doesn't think (passage of the Bill) can wait until another session ... we need to have something in place to deal with it."

Discussion continued. Chairman Nesbitt commented that Senator Goss, who has worked on the Bill, "wants to work on it until it's perfect." Vice Chairman Soles commented that he thinks the amendment offered by Vice Chairman Clodfelter is "a good amendment."

Senator Berger asked for summaries from the House Bill and any subsequent PCSs prior to coming to the Senate. Chairman Nesbitt charged Staff to provide members with Senator Berger's request. He then displaced the bill until the next Committee meeting the following week.

Chairman Nesbitt adjourned the meeting at 9:52 a.m.

Senator Martin Nesbitt, jr.
Chairman

Jessica Kozma Proctor
Committee Assistant

AGENDA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

SENATOR MARTIN L. NESBITT, CHAIRMAN
Senator Pete Brunstetter, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman
Senator Josh Stein, Vice Chairman

Thursday, June 24, 2010
9 a.m.
Room 1027

1. Call Meeting to Order.

2. Recognize members, staff, and guests.

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
HB 961	Gov't Ethics and Campaign Reform Act of 2010.	Representative Ross Representative Goodwin Representative Stam Representative Glazier
HB 1398	Determining Senior Resident Sup Ct Judge.	Representative Goodwin

Adjournment.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 1

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.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1398
PROPOSED SENATE COMMITTEE SUBSTITUTE H1398-CSRW-91 [v.1]

6/23/2010 7:32:29 PM

Short Title: Determining Senior Resident Sup Ct Judge. (Public)

Sponsors:

Referred to:

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; AND TO ALLOW A FEDERAL DISTRICT COURT JUDGE TO PERFORM MARRIAGE CEREMONIES.

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

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

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

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

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

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

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

HOUSE BILL 1398:
Determining Senior Resident Sup Ct Judge

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 23, 2010
Introduced by:	Rep. Goodwin	**Prepared by:**	Giles S. Perry
Analysis of:	PCS to First Edition H1398-CSRW-91		Committee Counsel

SUMMARY: ***House Bill 1398 (PCS) amends the statute that controls the determination of senior resident superior court judges to authorize the Chief Justice of the Supreme Court to designate one of the judges as senior resident superior court judge to serve at the pleasure of the Chief Justice in any district or set of districts with two or more regular resident superior court judges; and authorizes federal district court judges to perform marriages during a specified period.***

CURRENT LAW: Under the existing law, if there is one resident superior court judge for the district, that judge is the senior resident superior court judge.

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.

BILL ANALYSIS: Section 1 of the bill would grant the Chief Justice the authority to designate the senior resident superior court judge if there are two or more regular resident superior court judges for the district or set of districts.

Section 2 of the bill would authorize federal district court judges to perform marriage ceremonies from October 14-18, 2010.

EFFECTIVE DATE: Section 1 of the bill becomes effective October 1, 2010, 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. Section 2 of the bill becomes effective October 14, 2010 and expires October 18, 2010. Section 3 of the bill becomes effective when it becomes law.

BACKGROUND: Senior resident superior court judges and regular resident superior court judges possess equal jurisdiction, power, authority and status except for Constitutional and statutory duties placed on the senior resident judge, including appointment of the clerk and magistrates, removal of clerks and district attorneys, calendaring of cases, initiating and oversight of arbitration and mediated settlement conferences, and appointment of court reporters.

H1398-SMRW-212(CSRW-91) v1

Tim Hovis of the Research Division contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1398

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

H1398-ARW-30 [v.2]

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

Date _____,2010

Senator Stein

moves to amend the bill on page 1, line 18, by adding after the period the following:

"In exercising the authority to appoint senior resident superior court judges pursuant to this subdivision, the Chief Judge shall consider the seniority, experience, and management competence of the regular resident superior court judges. In addition, the Chief Justice shall consult with the regular resident superior court judges, the chief district court judges, the members of the district bar, the clerks of court, district attorneys, and public defenders within the district.".

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. 1398 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.) Berger
Sen.)

moves to amend the bill on page 2, lines 6-8

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read:

"serve as senior resident superior court judge until that judge vacates the seat. The remainder of this becomes effective when it becomes law.".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 961

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

H961-AST-149 [v.3]

Comm. Sub. [YES]
Amends Title [YES]
Fifth Edition

Date 6/24 ,2010

Senator Clodfelter

moves to amend the bill on page 1, lines 2-4 by rewriting those lines to read:

"AN ACT TO PROVIDE LIMITS ON THE TRADING OF";

and on page 1, line 19 through page 13, line 34 by deleting those lines;

and renumbering the remaining bill sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED V FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 3

HOUSE BILL 961
Committee Substitute Favorable 4/15/09
Committee Substitute #2 Favorable 5/12/09

Short Title: Pay to Play Regulation. (Public)

Sponsors:

Referred to:

April 1, 2009

A BILL TO BE ENTITLED

AN ACT TO PREVENT CONFLICT OF INTEREST AND ITS APPEARANCE INVOLVING POLITICAL CONTRIBUTIONS BY STATE CONTRACTORS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.13D. Prohibition on contributions by entity affiliated with a vendor.**

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

(1) Contribution. – As defined in G.S. 163-278.6(6). A contribution is made during the term of a contract if it is dated or pledged on or after the first day of the term of the contract, but not later than the last day of the term of the contract, if it is delivered on or after the first day of the term of the contract, but not later than the last day of the term of the contract, or if the entity affiliated with the vendor pledges during the term of the contract to deliver the contribution after the last day of the term of the contract. However, a contribution will not be deemed to be made if: (i) the vendor or entity affiliated with the vendor discovers the contribution within two months of the date of such contribution; (ii) such contribution exceeds one thousand dollars ($1,000); and (iii) the vendor or entity affiliated with the vendor obtains a return of the contribution within 60 calendar days of the date of discovery of the contribution. A contribution is accepted during the term of a contract if the relevant political campaign receives the contribution on or after the first day of the term of the contract, but not later than the last day of the term of the contract and does not return the contribution within 10 days, or the relevant political campaign agrees on or after the first day of the term of the contract to receive the contribution after the last day of the term of the contract.

(2) Entity affiliated with a vendor. – An officer, director, member, or manager of the vendor, if the vendor is an incorporated business or a limited liability company, a partner or general manager if the vendor is an unincorporated business entity, or any political committee of which the vendor is the parent entity as provided in G.S. 163-278.19. Director of a vendor means any director of the vendor whether or not receiving compensation. An advisory director is not a director of a vendor if the advisory director: (i) is not elected by the vendor's shareholders and the vendor is a company or bank; (ii) is not

authorized to vote on matters before the Board of Directors; and (iii) provides solely general policy advice to the Board of Directors.

(3) Office with authority to award contract. – Any of the principal offices or departments listed in G.S. 143A-11. Notwithstanding any other provision of law or delegation of authority and for the purposes of subsection (b) of this section, the head of the principal office or department shall be deemed to award all contracts for that principal office or department and for any other offices, agencies, or commissions administratively housed within that principal office or department.

(4) Relevant political campaign. – A candidate for the office with authority to award the contract, the officer holding the office with authority to award the contract, or a political committee controlled by a candidate for or officer holding the office with authority to award the contract.

(b) Prohibition. – No entity affiliated with a vendor that has entered into a contract for supplies, materials, equipment, other tangible personal property, or services in excess of twenty-five thousand dollars ($25,000) with any of the principal offices or departments listed in G.S. 143A-11 and subject to the provisions of Article 3 of Chapter 143 of the General Statutes shall make during the term of the contract a contribution to a relevant political campaign. No relevant political campaign shall knowingly accept a contribution during the term of the contract from an entity affiliated with a vendor that has entered into a contract for supplies, materials, equipment, other tangible personal property, or services in excess of twenty-five thousand dollars ($25,000) with any of the principal offices or departments listed in G.S. 143A-11 and subject to the provisions of Article 3 of Chapter 143 of the General Statutes. This subsection does not apply if the contributions by all entities affiliated with the vendor to the relevant political campaign during the term of the contract do not exceed one thousand dollars ($1,000). The State Board of Elections shall adopt any procedures for reporting it deems necessary for the enforcement of this subsection.

(c) Penalty. – A violation of this section is a Class 2 misdemeanor."

SECTION 2. This act becomes effective December 1, 2009, and applies to contributions made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H

5

HOUSE BILL 961

Committee Substitute Favorable 4/15/09
Committee Substitute #2 Favorable 5/12/09
Senate Judiciary I Committee Substitute Adopted 6/22/10
Senate Finance Committee Substitute Adopted 6/22/10

Short Title: Gov't Ethics and Campaign Reform Act of 2010. (Public)

Sponsors:

Referred to:

April 1, 2009

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN PUBLIC CONFIDENCE IN THE ELECTION PROCESS FOR COUNCIL OF STATE OFFICES THAT REGULATE INDIVIDUALS AND BUSINESSES IN THIS STATE; TO PROVIDE LIMITS ON THE TRADING OF INFLUENCE OR POSITION FOR GAIN; TO INCREASE THE PUNISHMENT FOR MAKING CAMPAIGN CONTRIBUTIONS IN THE NAME OF ANOTHER; TO INCREASE ACCESSIBILITY TO INFORMATION RELATED TO CANDIDATE CAMPAIGN COMMITTEES; TO STRENGTHEN PUBLIC CONFIDENCE IN GOVERNMENT BY INCREASING THE REVOLVING DOOR PERIOD AND APPLICABILITY; TO STRENGTHEN TRANSPARENCY OF GOVERNMENT THROUGH ADDITIONAL DISCLOSURES BY PUBLIC SERVANTS; TO INCREASE ACCOUNTABILITY OF PUBLIC SERVANTS, APPOINTEES OF THE GOVERNOR, AND STATE EMPLOYEES BY PERMITTING THE GOVERNOR TO ADOPT MINIMUM STANDARDS OF ETHICAL CONDUCT; TO STRENGTHEN TRANSPARENCY OF GOVERNMENT THROUGH INCREASING ACCESSIBILITY TO PUBLIC RECORDS; TO MAKE TECHNICAL CHANGES; AND TO MAKE OTHER CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 22J of Chapter 163 of the General Statutes reads as rewritten:

"Article 22J.

"The Voter-Owned Elections Act.

"§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.

The purpose of this Article is to ensure the vitality and fairness of democratic elections for elected offices that implement and provide oversight on the regulation or investigation of individuals, businesses, or government in North Carolina to the end that any eligible citizen of this State can realistically choose to seek and run for that public office. It is also the purpose of this Article to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption within regulatory or investigatory offices overseen by elected officials is minimized and that the equal and meaningful participation of all citizens in the democratic process is ensured. Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund as an alternative source of campaign financing for candidates

who obtain a sufficient number of qualifying contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for the Council of State offices of Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in elections to be held in 2008 and ~~thereafter.~~ thereafter; to candidates for the Council of State offices of Secretary of State and Treasurer, and to candidates for the offices of Commissioner of Agriculture and Commissioner of Labor, in elections to be held in 2012 and thereafter; and to candidates for the Council of State office of Attorney General in elections to be held in 2016 and thereafter.

"§ 163-278.96. Definitions.

The following definitions apply in this Article:

(1) Board. – The State Board of Elections.

(2) Campaign-related expenditure. – An expenditure that benefits the candidate's current campaign in accordance with guidelines established by the Board.

(3) Candidate. – An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a "candidate campaign committee" as defined in G.S. 163-278.38Z(3).

(4) Certified candidate. – A candidate for office who chooses to receive campaign funds from the Fund and who is certified under G.S. 163-278.98(c). A write-in candidate authorized under G.S. 163-123 is not eligible to become a certified candidate.

(5) Contested primary and contested general election. – An election in which there are more candidates than the number to be elected.

(6) Contribution. – Defined in G.S. 163-278.6. A distribution from the Fund pursuant to this Article is not a "contribution" and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or G.S. 163-278.19. Instead of being subject to G.S. 163-278.16B, distributions are subject to the guidelines issued by the Board pursuant to G.S. 163-278.98(e)(5).

(6a) Electioneering communication. – As defined in G.S. 163-278.80 and G.S. 163-278.90, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day.

(7) Expenditure. – Defined in G.S. 163-278.6.

(8) Fund. – The North Carolina Voter-Owned Elections Fund established in G.S. 163-278.97.

(9) Independent expenditure. – Defined in G.S. 163-278.6.

(10) Maximum qualifying contributions. – If the candidate has ~~an uncontested~~ no primary, an amount equal to ~~100~~one hundred dollars ($100.00) times the ~~filing fee~~ minimum number of registered voters required to make a qualifying contribution under G.S. 163-278.98(b) for the office sought. If the candidate has a contested primary, ~~200~~ two hundred dollars ($200.00) times the ~~filing fee~~ minimum number of registered voters required to make a qualifying contribution under G.S. 163-278.98(b) for the office sought.

(11) Nonparticipating candidate. – A candidate for office who is not seeking to be certified under G.S. 163-278.98(c).

(12) Office. – The Council of State offices of Auditor, Secretary of State, Superintendent of Public Instruction, Treasurer, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

(13) Participating candidate. – A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.98(a).

(14) Political committee. – Defined in G.S. 163-278.6.

(15) Qualifying contribution. – A contribution of not less than ten dollars ($10.00) and not more than two hundred dollars ($200.00) in the form ~~of a check or money order~~ prescribed for noncash monetary contributions in G.S. 163-278.14(b) to the candidate that meets both of the following conditions:

a. Made by ~~any~~ an individual who is a registered voter in this ~~State.~~State at the time of the submittal of the report specified in G.S. 163-278.98(c).

b. Made only during the qualifying period and obtained with the approval of the candidate or candidate's committee.

(16) Qualifying period. – The period beginning September 1 in the year before the election and ending on the day of the primary.

(17) Trigger for matching funds. – The dollar amount at which matching funds are released under G.S. 163-278.99B for certified candidates. In the case of a contested primary, the trigger equals the maximum qualifying contributions for the candidate. In the case of a contested general election, the trigger equals the base level of funding available under G.S. 163-278.99(b)(4).

"§ 163-278.97. Voter-Owned Elections Fund established; sources of funding.

(a) Establishment of Fund. – The North Carolina Voter-Owned Elections Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

(b) Sources of Funding. – Money received from all the following sources must be deposited in the Fund:

(1) Unspent Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.

(2) Money ordered returned to the Fund in accordance with G.S. 163-278.99D.

(3) Money paid to the Fund equal to excess contributions as provided in G.S. 163-278.98(e)(1).

(4) Voluntary donations made directly to the Fund.

(5) Appropriations from the General Fund.

(6) Money collected pursuant to G.S. 55A-1-22, 57C-1-22, 58-33-125, 78A-37, 95-110.5(20), 95-69.11(11), 106-22, and 147-69.2(e).

(c) Evaluation and Determination of Fund Amount. – By January 1, 2011, and every four years thereafter, the Board, in conjunction with the Advisory Council established under G.S. 163-278.68(b), shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund during the next election cycle ~~and make recommendations about the feasibility of expanding its provisions to include other candidates for State office~~ based on the experience of this Article and the experience of similar programs in North Carolina and other states. The Board shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates but is not reached by regulation.

"§ 163-278.98. Requirements for participation.

(a) Declaration of Intent to Participate. – Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the

program established by this Article as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, campaign-related expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (e) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. – In order to be certified, participating candidates must obtain qualifying contributions from at least ~~750~~ 900 registered voters in this ~~State.~~ State, and from an additional 100 registered voters in this State for each one hundred thousand dollars ($100,000) that the grant amount for the office under G.S. 163-278.99(b)(4) exceeds three hundred thousand dollars ($300,000). Multiple contributions from the same individual to the same candidate shall not count as more than one qualifying contribution.

The qualifying contributions shall be equal to at least ~~25~~ twenty dollars ($20.00) times the ~~amount of the filing fee for the office.~~ minimum number of qualifying contributions but shall not exceed the maximum qualifying contributions defined in G.S. 163-278.96(10). No payment, gift, ~~or~~ anything of ~~value~~ value, or the opportunity to win anything of value shall be given in exchange for a qualifying contribution.

(c) Certification of Candidates. – Upon receipt of a submittal of the record of qualifying contributions by a participating candidate, the Board shall determine whether or not the candidate has:

(1) Filed a completed declaration of intent to participate in this Article.
(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.
(3) Filed a notice of candidacy with the State Board of Elections as a candidate for the office.
(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of qualifying contributions.

(d) Final Report for Qualifying Contributions. – No later than five business days after the end of the qualifying period, all participating candidates shall submit a report to the Board of all previously unreported qualifying contributions, in accordance with procedures developed by the Board. Within seven business days after submittal of the final report, the Board shall determine, through a random audit or other means it adopts, whether the contributions abide by the definition of qualifying contributions, whether they must be returned to the donor, and whether they exceed the maximum amount of qualifying contributions.

(e) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. – The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning August 1 of the year before the election and before filing a declaration of intent, a candidate shall limit campaign-related expenditures to twenty thousand dollars ($20,000) and shall not accept more than twenty thousand dollars ($20,000) from sources and in amounts permitted by Article 22A of this Chapter. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Fund. However, the acceptance of contributions in excess of that twenty thousand dollar ($20,000) limit does not render the candidate ineligible if the

candidate pays to the Board an amount equal to the contributions accepted by the candidate in excess of that limit. The Board shall deposit all such payments into the Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, in-kind party contributions as permitted in subdivision (4) of this subsection, and personal and family contributions permitted under subdivision (4a) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. Except for personal and family contributions permitted under subdivision (4a) of this subsection, multiple contributions from the same contributor to the same candidate shall not exceed two hundred dollars ($200.00). In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this subsection and possible matching funds received pursuant to G.S. 163-278.99B. If the candidate has any remaining money that was raised as contributions before August 1 of the year before the election, the candidate may not expend that money after filing the declaration of intent, except for purposes permitted under subdivision (2), (3), (6), (7), or (8) of G.S. 163-278.16B(a).

(3) After the qualifying period and through the date of the general election, the candidate shall cease campaign-related fund-raising activities and shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.99(b) plus any funds remaining from the qualifying period and possible matching funds.

(4) In addition to the amounts above, a candidate may accept in-kind contributions from political party executive committees, up to an aggregate value of thirty thousand dollars ($30,000) for the election cycle.

(4a) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. The candidate may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister. Up to two hundred dollars ($200.00) of a contribution from the candidate's family member may be treated as a qualifying contribution if it meets the requirements of G.S. 163-278.96(15)a. and b.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures.

(6) Except as provided in subdivision (1) of this subsection, any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.99D. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election or at the time the individual ceases to be a certified candidate, whichever occurs first. For

accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(f) Revocation. – A candidate may revoke, in writing to the Board, a decision to participate in the Fund at any time. After a revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund.

"§ 163-278.99. Distribution from the Fund.

(a) Timing of Fund Distribution. – The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section as follows:

(1) One-third of the amount within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(2) The remainder of the amount on August 1 before the general election.

(b) Amount of Fund Distribution. – ~~By August 1, 2011, and no less frequently than every four years thereafter,~~ No later than August 1 of the second year before an election, the Board shall determine the amount of ~~funds, rounded to the nearest one hundred dollars ($100.00),~~ funds to be distributed to certified candidates as follows:

(1) ~~Uncontested primaries.~~ No primary. – No funds shall be distributed.

(2) Contested primaries. – No funds shall be distributed except as provided in G.S. 163-278.99B.

(3) Uncontested general elections. – No funds shall be distributed.

(4) Contested general elections. – The amount of funds to be distributed to a candidate is the average amount of campaign-related expenditures made in the general election by all candidates who won the immediately preceding three general elections for that office, rounded to the nearest one thousand dollars ($1,000), but not less than three hundred thousand dollars ($300,000). For purposes of this subsection, "campaign-related expenditures" does not include loan repayments and contributions to a candidate, political committee, or political party. For purposes of this subsection, expenditures are made in the general election if they are required to be reported on the third and fourth quarterly reports.

(c) Method of Fund Distribution. – The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding, and the candidate may raise additional money in the same manner as a nonparticipating candidate for the same office up to the unfunded amount of the candidate's eligible funding.

"§ 163-278.99A. Reporting requirements.

(a) Reporting by Noncertified Candidates and Other Entities. – Any nonparticipating candidate with a certified opponent shall report total contributions received to the Board by facsimile machine or electronically within 24 hours after the total amount of contributions received exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163-278.96(17). Any entity making independent expenditures in support of or in opposition to a certified candidate, or in support of a candidate opposing a certified candidate, or paying for electioneering communications referring to one of those candidates, shall report the total funds received, spent, or obligated for those expenditures or payments to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent

expenditures or electioneering communications exceeds five thousand dollars ($5,000). After the initial 24-hour filing, the nonparticipating candidate or other reporting entity shall comply with an expedited reporting schedule. The schedule and forms for reports required by this subsection shall be supplied by the Board.

(b) Reporting by Participating and Certified Candidates. – Notwithstanding other provisions of law, participating and certified candidates shall report any money received and all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. Upon the filing of a final report for any losing primary election, special election, or general election, each candidate who has revenues from the Fund remaining unspent shall return those revenues to the Board. In developing these procedures, the Board shall utilize existing campaign reporting procedures wherever practicable.

(c) Timely Access to Reports. – The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information.

"**§ 163-278.99B. Matching funds.**

(a) When Matching Funds Become Available. – When any report or group of reports shows that "funds in opposition to a certified candidate or in support of an opponent to that candidate" as described in this section exceed the trigger for matching funds as defined in G.S. 163-278.96(17), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. "Funds in opposition to a certified candidate or in support of an opponent to that candidate" shall be equal to the sum of subdivisions (1) and (2) as follows:

(1) The greater of the following:

a. Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one nonparticipating opponent of a certified candidate. Where a certified candidate has more than one nonparticipating opponent, the measure shall be taken from the nonparticipating candidate showing the highest relevant dollar amount.

b. The funds distributed in accordance with G.S. 163-278.99(b) to a certified opponent of the certified candidate.

(2) The aggregate total of all expenditures and payments reported in accordance with G.S. 163-278.99A(a) of entities making independent expenditures or electioneering communications in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Matching Funds ~~in Contested Primary.~~ Before Date of Primary. – Total matching funds to a certified candidate ~~in a contested~~ before the date of the primary shall be limited to an amount equal to the maximum qualifying contributions for a candidate with a contested primary. Matching funds are available to a certified candidate with an opponent in the primary or to a certified candidate who is clearly referred to in expenditures reportable under G.S. 163-278.99A made in opposition to that candidate.

(c) Limit on Matching Funds in Contested General Election. – Total matching funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163-278.99(b)(4).

(d) Determinations by Board. – In the case of electioneering communications, the Board shall determine which candidate, if any, is entitled to receive matching funds as a result of the communication. The Board shall issue matching funds based on the communication only if it ascertains that the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. In making its determination, the Board shall not consider evidence external to the communication itself of the intent of the sponsor or the effect of the communication. The Board shall notify each candidate it determines is entitled

to receive matching funds based on those communications, the sponsor of those communications, and any candidate who is an opponent of the candidate it determines is entitled to the matching funds. The Board shall give the sponsor of the communication and any opposing candidate an adequate opportunity to rebut the determination of the Board. In considering the rebuttal, all candidates in the race and the sponsor shall be given adequate and equal opportunity to be heard. The Board shall adopt procedures for implementing this subsection, balancing in those procedures adequacy of opportunity to rebut and adequacy and equality of opportunity to be heard on the rebuttal with the need to expedite the decision on awarding matching funds. The Board shall distribute the matching funds, if any, at the conclusion of its process.

(e) Proportional Measuring of Multicandidate Communications. – In calculating the amount of matching funds a certified candidate is eligible to receive under this section, the Board shall include the proportion of expenditures, obligations, or payments for multicandidate communications that pertains to the candidate.

(f) No Matching Funds for Communications Supporting or Opposing All Candidates. – No matching funds are available under this section as a result of an expenditure that supports all candidates for the same office or opposes all candidates for the same office. No matching funds are available under this section as a result of an electioneering communication that the Board ascertains is susceptible of no reasonable interpretation other than as an appeal to vote for all candidates for the same office or to vote against all candidates for the same office.

"§ 163-278.99C. Unaffiliated and new-party candidates.

Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the same amounts and at the same time as specified in G.S. 163-278.99. For unaffiliated candidates and new-party candidates not certified to appear on the ballot by noon on the deadline set in G.S. 163-106(c) for candidate filing in the election year, the deadline for seeking certification to receive revenue from the Fund is noon on the first business day of July of the election year.

"§ 163-278.99D. Enforcement by the Board; civil penalty.

In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation or three times the amount of any financial transactions involved in the violation, whichever is greater. In addition to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the Board makes a determination that a violation of this Article has occurred, the Board shall calculate and assess the amount of the civil penalty and shall notify the entity that is assessed the civil penalty of the amount that has been assessed. The Board shall then proceed in the manner prescribed in G.S. 163-278.34. In determining whether or not a candidate is in violation of this Article, the Board may consider as a mitigating factor any circumstances out of the candidate's control.

"§ 163-278.99D.1. Enforcement and administration.

(a) Enforcement by the Board. – The Board, with the advice of the Advisory Council for the Public Campaign Fund established by G.S. 163-278.68, shall administer the provisions of this Article.

(b) Appeals. – The initial decision on an issue concerning qualification, certification, or distribution of funds under this Article shall be made by the Executive Director of the Board. The procedure for challenging that decision is as follows:

(1) An individual or entity aggrieved by a decision by the Executive Director of the Board may appeal to the full Board within three business days of the decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five business days after an appeal is properly made, and after due notice is given to the parties, the Board shall hold a hearing. The appellant has the burden of providing clear and convincing evidence to demonstrate that the decision of the Executive Director was improper. The Board shall rule on the appeal within three business days after the completion of the hearing.

(c) Board to Adopt Procedures and Issue Opinions. – The Board shall adopt procedures and issue opinions to ensure effective administration of this Article. Such procedures and opinions shall include, but not be limited to, procedures for obtaining qualifying contributions, certification of candidates, addressing circumstances involving special elections, vacancies, recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance with this Article. The Board shall adopt procedures for the distribution of matching money that further the purpose and avoid the subversion of G.S. 163-278.99B. For races involving special elections, recounts, vacancies, withdrawals, or replacement candidates, the Board shall establish procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues. Where applicable, the Board shall adopt the provisions of G.S. 163-278.64A. The Board shall fulfill each of these duties in consultation with the Advisory Council on the Public Campaign Fund.

(d) Report to the Public. – The Advisory Council for the Public Campaign Fund shall issue a report by March 1, 2013, and every two years thereafter that evaluates and makes recommendations about the implementation of this Article based on the experience of the Fund and the experience of similar programs in other states. The Advisory Council shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates receiving money from the Fund but that does not meet the definition of "independent expenditures."

"**§ 163-278.99E. Voter education.**

(a) Voter Guide. – The Board shall publish a Voter Guide that explains the functions of ~~office as defined in G.S. 163-278.96(12) and the laws concerning the election~~ all 10 offices of the Council of State, the purpose and function of the Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The State Board of Elections shall maintain a list of the addresses from which mailed Voter Guides are returned as undeliverable. That list shall be available for public inspection. The distribution shall occur no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the primary and no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the general election.

(b) Candidate Information. – The Voter Guide shall include information concerning all candidates for ~~office as defined in G.S. 163-278.96(12),~~ all 10 of the offices of the Council of State, as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

(1) Place of residence.
(2) Education.
(3) Occupation.
(4) Employer.
(5) Previous elective offices held.
(6) ~~Endorsements, limited to 50 words.~~ Endorsements. – Concerning endorsements, the Board shall send to the candidates instructions as follows: "In order to have an endorsement published, you must provide written

confirmation to the Board from the endorsing person or organization that you received that person's or organization's endorsement."

(7) Candidate ~~statement, limited to 150 words.~~ Statement. – Concerning that statement, the Board shall send to the candidates instructions as follows: "Your statement may include information such as your qualifications, your endorsements, why you would make a good elected official, what distinguishes you from your opponent(s), and any other information relevant to your candidacy. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language. The candidate shall have three days to resubmit the candidate statement if the Board rejects a portion of the statement."

The entire entry for a candidate shall be limited to 250 words.

(c) Disclaimer. – The Voter Guide shall contain the following statement: "Statements by candidates do not express or reflect the opinions of the State Board of Elections."

(d) Relationship to the Judicial Voter Guide. – ~~The Board may~~ Whenever possible, the Board shall publish the Voter Guide in conjunction with the Judicial Voter Guide described in G.S. 163-278.69."

SECTION 1.(b) G.S. 55A-1-22 reads as rewritten:

"**§ 55A-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	~~$60.00~~$65.00
(2)	Application for reserved name	$10.00
(3)	Notice of transfer of reserved name	$10.00
(4)	Application for registered name	$10.00
(5)	Application for renewal of registered name	$10.00
(6)	Corporation's statement of change of registered agent or registered office or both	$ 5.00
(7)	Agent's statement of change of registered office for each affected corporation	$ 5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	$ 5.00
(10)	Amendment of articles of incorporation	$25.00
(11)	Restated articles of incorporation without amendment of articles	$10.00
(12)	Restated articles of incorporation with amendment of articles	$25.00
(13)	Articles of merger	$25.00
(14)	Articles of dissolution	$15.00
(15)	Articles of revocation of dissolution	$10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Application for reinstatement following administrative dissolution	$100.00
(18)	Certificate of reinstatement	No fee
(19)	Certificate of judicial dissolution	No fee
(20)	Application for certificate of authority	$125.00
(21)	Application for amended certificate of authority	$25.00
(22)	Application for certificate of withdrawal	$10.00
(23)	Certificate of revocation of authority to conduct affairs	No fee
(24)	Corporation's Statement of Change of Principal Office	$ 5.00
(24a)	Designation of Principal Office Address	$ 5.00

(25)	Articles of correction	$10.00
(26)	Application for certificate of existence or authorization (paper)	$15.00
(26a)	Application for certificate of existence or authorization (electronic)	$10.00
(27)	Any other document required or permitted to be filed by this Chapter	$10.00
(28)	Repealed by Session Laws 2001-358, s. 7(c), effective January 1, 2002.	

(a1) Of the fee charged pursuant to subdivision (a)(1) of this section, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original.
(2) Fifteen dollars ($15.00) for a paper certificate.
(3) Ten dollars ($10.00) for an electronic certificate."

SECTION 1.(c) G.S. 57C-1-22 reads as rewritten:

"**§ 57C-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	Articles of organization	~~$125.00~~$130.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(12a)	Articles of conversion (other than articles of conversion included as part of another document)	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	Cancellation of articles of dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(16a)	Application for reinstatement following administrative dissolution	100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	250.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee

(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization (paper)	15.00
(24a)	Application for certificate of existence or authorization (electronic)	10.00
(25)	Annual report	~~200.00~~205.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00
(27)	Repealed by Session Laws 2001-358, s. 8(c).	

(a1) Of the fee charged pursuant to subdivision (a)(1) of this section, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited liability company:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate."

SECTION 1.(d) G.S. 58-33-125(c) reads as rewritten:

"(c) Any person who is not licensed and who is required by law or administrative rule to secure a license shall, upon application for licensing, pay to the Commissioner a fee of ~~fifty dollars ($50.00).~~ fifty-five dollars ($55.00). If additional licensing for other kinds of insurance is requested, a fee of ~~fifty dollars ($50.00)~~ fifty-five dollars ($55.00) shall be paid to the Commissioner upon application for licensing for each additional kind of insurance. Of the fifty-five dollar ($55.00) fee charged, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes.

In addition to the fees prescribed by this subsection, any person applying for a supplemental license to sell Medicare supplement and long-term care insurance policies shall pay an additional fee of fifty dollars ($50.00) upon application for licensing for those kinds of insurance."

SECTION 1.(e) G.S. 78A-37(b) reads as rewritten:

"(b) Every applicant for initial or renewal registration shall pay a filing fee of ~~three hundred dollars ($300.00)~~ three hundred five dollars ($305.00) in the case of a dealer and ~~one hundred twenty-five dollars ($125.00)~~ one hundred thirty dollars ($130.00) in the case of a salesman. The Administrator may by rule reduce the registration fee proportionately when the registration will be in effect for less than a full year. Of a fee charged pursuant to this subsection, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(f) G.S. 95-110.5(20) reads as rewritten:

"(20) To establish fees not to exceed two hundred dollars ($200.00) for the inspection and issuance of certificates of operation for all devices and equipment subject to this Article upon installation or alteration, for each follow-up inspection, and for annual periodic inspections thereafter. Of the fee charged pursuant to this subdivision, an additional five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(g) G.S. 95-69.11(11) reads as rewritten:

"(11) To establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels that are in use. Of any fee charged pursuant to this subdivision, an additional five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(h) G.S. 106-22 is amended by adding a new subdivision to read:

"(18) Rental agreements. – For every rental agreement for real property where the Board or the Commissioner is the lessor, the Board or Commissioner shall charge an additional three percent (3%), which shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(i) G.S. 147-69.2 is amended by adding a new subsection to read:

"(e) There shall be charged a fee of two one-hundredths of a percent (.02%) on each fund held by the Treasurer that consists of nontax revenue, excluding funds holding monies for pensions and retirement, escheats, general fund, federal funds, and bond proceeds, to be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(j) For the period January 1, 2011, through December 31, 2012, two dollars and fifty cents ($2.50) of each three dollar ($3.00) allocation under G.S. 105-159.2 shall be transferred on a monthly basis to the North Carolina Voter-Owned Election Fund for distribution under Article 22J of Chapter 163 of the General Statutes in the 2012 election.

SECTION 1.(k) The State Board of Elections shall make the determination of available funds required by G.S. 163-278.99(b), as enacted by this section, on October 1, 2010, or within 30 days of receiving preclearance under section 5 of the Voting Rights Act of 1965, whichever date occurs first.

SECTION 1.(l) This section becomes effective October 1, 2010.

SECTION 2.(a) G.S. 163-278.96(12), as amended by Section 1 of this act, reads as rewritten:

"(12) Office. – The Council of State offices of Attorney General, Auditor, Secretary of State, Superintendent of Public Instruction, Treasurer, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance."

SECTION 2.(b) This section becomes effective July 1, 2015.

SECTION 3.(a) G.S. 126-14 reads as rewritten:

"**§ 126-14. Promise or threat to obtain political contribution or support.**

(a) It is unlawful for a State employee or a person appointed to State office, other than elective office or office on a board, commission, committee, or council whose function is advisory only, whether or not subject to the Personnel Act, to coerce:

(1) a State employee subject to the Personnel Act,
(2) a probationary State employee,
(3) a temporary State employee, or
(4) an applicant for a position subject to the Personnel Act

to support or contribute to a political candidate, political committee as defined in G.S. 163-278.6, or political party or to change the party designation of ~~his~~ the individual's voter registration by threatening that change in employment status or discipline or preferential personnel treatment will occur with regard to ~~a person~~ an individual listed in subdivisions (1) through (4).

(a1) It is unlawful for an individual as defined in G.S. 138A-3(30)a. to coerce a person as described in G.S. 138A-32(d)(1), (2), or (3) to support or contribute to a political candidate, a political committee as defined in G.S. 163-278.6, or a political party by threatening discipline

or promising preferential treatment with regard to that person's business with the individual's State office or that person's activities regulated by the individual's State office.

(b) Any person violating this section shall be guilty of a Class 2 misdemeanor.

(c) A State employee subject to the Personnel Act, probationary State employee, or temporary State employee who without probable cause falsely accuses a State employee or a person appointed to State office of violating this section shall be subject to discipline or change in employment status in accordance with the provisions of G.S. 126-35, 126-37, and 126-38 and may, as otherwise provided by law, be subject to criminal penalties for perjury or civil liability for libel, slander, or malicious prosecution."

SECTION 3.(b) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 4.(a) G.S. 14-234(a) reads as rewritten:

"**§ 14-234. Public officers or employees benefiting from public contracts; exceptions.**

(a) (1) No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.

(2) A public officer or employee who will derive a direct benefit from a contract with the public agency he or she serves, but who is not involved in making or administering the contract, shall not attempt to influence any other person who is involved in making or administering the contract.

(3) No public officer or employee may solicit or receive any gift, favor, reward, service, or promise of ~~reward~~ reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves."

SECTION 4.(b) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 5.(a) G.S. 120C-304(a) reads as rewritten:

"(a) No legislator or former legislator may register as a lobbyist under this ~~Chapter:~~Chapter

~~(1)~~ ~~While~~while in ~~office.~~office or

~~(2)~~ ~~Before the later of the close of session as set forth in G.S. 120C-100(a)(4)b.1 in which the legislator served or six months~~ within one year after leaving office."

SECTION 5.(b) G.S. 120C-304(b) reads as rewritten:

"(b) No public servant or former public servant as defined in G.S. 138A-3(30)a. may register as a lobbyist under this Chapter while in office or within ~~six months~~ one year after leaving office."

SECTION 5.(c) G.S. 120C-304(c) reads as rewritten:

"(c) No public servant or former public servant as defined in G.S. 138A-3(30)c. may register as a lobbyist under this Chapter within ~~six months~~ one year after separation from employment as a public servant. No other employee of any State agency may register as a lobbyist under this Chapter to lobby the State agency that previously employed the former employee within one year after voluntary separation or separation for cause from that State agency."

SECTION 5.(d) G.S. 120C-200 is amended by adding a new subsection to read:

"(f) In addition to the information required for registration under subsection (b) of this section, former employees of a State agency who register as a lobbyist within one year after voluntary separation or separation for cause from employment with a State agency shall also indicate which State agency with which the former employee was employed."

SECTION 5.(e) This section becomes effective October 1, 2010, and applies to individuals leaving office or employment on or after that date.

SECTION 6. G.S. 163-278.22(7) reads as rewritten:

"(7) To make investigations to the extent the Board deems necessary with respect to statements filed under the provisions of this Article and with respect to alleged failures to file any statement required under the provisions of this Article or Article 22M of the General Statutes and, upon complaint under oath by any registered voter, with respect to alleged violations of any part of this Article or Article 22M of the General Statutes. The Board has the authority to hire or contract with a special investigator, if needed, for this purpose."

SECTION 7.(a) G.S. 163-278.27 reads as rewritten:

"§ 163-278.27. Criminal penalties; duty to report and prosecute.

(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D, 163-278.40E, or 163-278.40J is guilty of a Class 2 misdemeanor. The statute of limitations as stated in G.S. 15-1 shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred.

(a1) A violation of G.S. 163-278.32 by making a certification knowing the information to be untrue is a Class I felony.

(a2) A person or individual who intentionally violates G.S. 163-278.14(a) or G.S. 163-278.19(a) and the unlawful contributions total more than ten thousand dollars ($10,000) per election is guilty of a Class I felony.

(b) Whenever the Board has knowledge of or has reason to believe there has been a violation of any section of this Article, it shall report that fact, together with accompanying details, to the following prosecuting authorities:

(1) In the case of a candidate for nomination or election to the State Senate or State House of Representatives: report to the district attorney of the prosecutorial district in which the candidate for nomination or election resides;

(2) In the case of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, State Attorney General, State Commissioner of Agriculture, State Commissioner of Labor, State Commissioner of Insurance, and all other State elective offices, Justice of the Supreme Court, Judge of the Court of Appeals, judge of a superior court, judge of a district court, and district attorney of the superior court: report to the district attorney of the prosecutorial district in which Wake County is located;

(3) In the case of an individual other than a candidate, including, without limitation, violations by members of political committees, referendum committees or treasurers: report to the district attorney of the prosecutorial district in which the individual resides; and

(4) In the case of a person or any group of individuals: report to the district attorney or district attorneys [of] the prosecutorial district or districts in which any of the officers, directors, agents, employees or members of the person or group reside.

(c) Upon receipt of such a report from the Board, the appropriate district attorney shall prosecute the individual or persons alleged to have violated a section or sections of this Article.

(d) As a condition of probation, a sentencing judge may order that the costs incurred by the State Board of Elections in investigating and aiding the prosecution of a case be paid to the State Board of Elections by the defendant on such terms and conditions as set by the judge.".

SECTION 7.(b) G.S. 163-278.14(a) reads as rewritten:

"(a) No individual, political committee, or other entity shall make any contribution anonymously or in the name of another. No candidate, political committee, referendum committee, political party, or treasurer shall knowingly accept any contribution made by any individual or person in the name of another individual or person or made anonymously. If a candidate, political committee, referendum committee, political party, or treasurer receives anonymous contributions or contributions determined to have been made in the name of another, he shall pay the money over to the Board, by check, and all such moneys received by the Board shall be deposited in the Civil Penalty and Forfeiture Fund of the State of North Carolina. This subsection shall not apply to any contribution by an individual with the lawful authority to act on behalf of another individual, whether through power of attorney, trustee, or other lawful authority."

SECTION 7.(c) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 8. In order to foster and facilitate transparency of information relating to political campaigns, the State Board of Elections shall create an easily searchable database to provide any member of the public with access to the database to search by geographic location, occupation, employer, contributor, or contributee, within an election cycle and over a period of time as specified by the searcher.

SECTION 9. Article 2 of Chapter 143C of the General Statutes is amended to add new sections to read:

"**§ 143C-2-5. Grants and contracts database.**

(a) The Director of the Budget shall require the Office of State Budget and Management, with the support of Information Technology Services, to build and maintain a database and Web site for providing a single, searchable Web site on State spending for grants and contracts.

(b) Heads of the principal departments as listed in G.S. 143B-6 shall monthly conduct a review of all State contracts and grants administered by the principal department.

(c) All State institutions, departments, bureaus, agencies, or commissions subject to the authority of the Director of the Budget that maintain a Web site shall be required to include an access link to the NC OpenBook Web site on the home page of the agency Web site. Each agency shall also prominently display a search engine on the agency Web site home page to allow for ease of searching for information, including contracts and grants, on the agency's Web site.

"**§ 143C-2-6. Contents of database and Web site.**

(a) The Office of State Controller, the Department of Administration, and Information Technology Services shall provide the Office of State Budget and Management with the statewide information on State contracts necessary for the development and maintenance of the database and Web site required by this Article, with the information updated at least every 30 days.

(b) The Office of State Budget and Management shall work with the Office of the State Auditor and the Grant Information Center to incorporate data on grants into the database and Web site required by this Article. All State institutions, departments, bureaus, agencies, or commissions subject to the authority of the Governor shall make necessary changes to existing reporting processes for grants and contracts to ensure the goals of this Article are met.

(c) All State contracts and grants awarded in amounts in excess of ten thousand dollars ($10,000) shall be included in the database and Web site required by this Article. The following information shall be provided for each contract or grant:

(1) The name of the entity receiving the award.
(2) The amount of the award or estimated award.
(3) Information on the award, including transaction type, funding agency, duration of contract, or grant award.
(4) The location of the entity receiving the award.
(5) Background information on the entity receiving the award.
(6) Time lines for anticipated completion of the work required.
(7) Expected outcomes of the contract or grant and specific deliverables required.
(8) Contact information for the responsible State government officer or administrator of the contract or grant."

SECTION 10. G.S. 138A-3(30) reads as rewritten:

"(30) Public servants. – All of the following:

a. Constitutional officers of the State and individuals elected or appointed as constitutional officers of the State prior to taking office.
b. Employees of the Office of the Governor.
c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.
d. The chief deputy and chief administrative assistant of each individual designated under sub-subdivision a. or c. of this subdivision.
e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to individuals designated under sub-subdivision a., c., or d. of this subdivision.
f. Employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.
g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.
h. Judicial employees.
i. All voting members of boards, including ex officio members, permanent designees of any voting member, and members serving by executive, legislative, or judicial branch appointment.
j. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.
k. For the Community College System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community College System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.
l. Members of the ~~Commission.~~Commission, the executive director, and the assistant executive director of the Commission.
m. Individuals under contract with the State working in or against a position included under this subdivision.
n. The director of the Office of State Personnel.
o. The State Controller.

p. The chief information officer, deputy chief information officers, chief financial officers, and general counsel of the Office of Information Technology.
q. The director of the State Museum of Art.
r. The executive director of the Agency for Public Telecommunication.
s. The Commissioner of Motor Vehicles.
t. The Commissioner of Banks and the chief deputy commissioners of the Banking Commission.
u. The executive director of the North Carolina Housing Finance Agency.
v. The executive director, chief financial officer, and chief operating officer of the North Carolina Turnpike Authority."

SECTION 11. G.S. 143B-478 is amended by adding a new subsection to read:

"(f) The Commission shall be treated as a board for purposes of Chapter 138A of the General Statutes."

SECTION 12. G.S. 138A-22 is amended by adding a new subsection to read:

"(d1) In addition to subsections (a) and (d) of this section, a covered person holding elected office or a former covered person who held elected office subject to this Article shall file a statement of economic interest in all of the following instances, as specified:

(1) Filed on or before April 15 of the year following the year a covered person elects not to continue in the position making that individual a covered person, with all information provided in the statement of economic interest current as of the last day of December of the preceding year.
(2) Filed on or before April 15 of the year following the year the covered person resigns from the position making that individual a covered person, with all information provided in the statement of economic interest current as of the last day in the position.
(3) Filed on or before April 15 of the year following the year the covered person dies while holding the position that made the deceased a covered person, with all information provided in the statement of economic interest current as of the day of death. The statement of economic interest shall be filed by the personal representative of the estate."

SECTION 13.(a) G.S. 138A-24(a) reads as rewritten:

"**§ 138A-24. Contents of statement.**

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

(1) Except as otherwise provided in this subdivision, the name, current mailing address, occupation, employer, and business of the filing person. Any individual holding or seeking elected office for which residence is a qualification for office shall include a home address. A judicial officer may use a current mailing address instead of the home address on the form required in this subsection. The judicial officer may also use the initials instead of the name of any unemancipated child of the judicial officer who also resides in the household of the judicial officer. If the judicial officer provides the initials of an unemancipated child, the judicial officer shall concurrently provide the name of the unemancipated child to the Commission. The name of an unemancipated child provided by the judicial officer to the Commission shall not be a public record under Chapter 132 of the General Statutes and is privileged and confidential.

(2) A list of each asset and liability included in this subdivision of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars ($10,000) owned by the filing person and the filing person's immediate family, except assets or liabilities held in a blind trust. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the filing person or the filing person's immediate family, including descriptions adequate to determine the location by city and county of each parcel.

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

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

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

e. The name of each publicly owned company. For purposes of this sub-subdivision, the term "publicly owned company" shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

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

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

f. The name of each nonpublicly owned company or business entity, including interests in sole proprietorships, partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations.

g. For each company or business entity listed under sub-subdivision f. of this subdivision, if known, a list of any other companies or business entities in which the company or business entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000).

~~h. A list of all nonpublicly owned businesses of which the filing person and the filing person's immediate family is an officer, employee, director, partner, owner, or member or manager of a limited liability company.~~

i. For any company or business entity listed under sub-subdivisions f., g., and h. of this subdivision, if known, any company or business entity that has any material business dealings, contracts, or other involvement with the State, or is regulated by the State, including a brief description of the business activity.

j. For a vested trust created, established, or controlled by the filing person of which the filing person or the members of the filing person's immediate family are the beneficiaries, excluding a blind trust, the name and address of the trustee, a description of the trust, and the filing person's relationship to the trust.

k. A list of all liabilities, excluding indebtedness on the filing person's primary personal residence, by type of creditor and debtor.

l. Repealed by Session Laws 2007-348, s. 34. See Editor's note for effective date.

m. A list of all stock options in a company or business not otherwise disclosed on this statement.

(3) The name of each source (not specific amounts) of income of more than five thousand dollars ($5,000) received during the previous year by business or industry type, if that source is not listed under subdivision (2) of this subsection. Income shall include salary, wages, professional fees, honoraria, interest, dividends, rental income, and business income from any source other than capital gains, federal government retirement, military retirement, or social security income.

(4) If the filing person is a practicing attorney, an indication of whether the filing person, or the law firm with which the filing person is affiliated, earned legal fees during the past year in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

a. Administrative law.
b. Admiralty law.
c. Corporate law.
d. Criminal law.
e. Decedents' estates law.
f. Environmental law.
g. Insurance law.
h. Labor law.
i. Local government law.
j. Negligence or other tort litigation law.
k. Real property law.
l. Securities law.
m. Taxation law.
n. Utilities regulation law.

(5) Except for a filing person in compliance under subdivision (4) of this subsection, if the filing person is a licensed professional or provides consulting services, either individually or as a member of a professional association, a list of categories of business and the nature of services rendered, for which payment for services were charged or paid during the past year in excess of ten thousand dollars ($10,000).

(6) An indication of whether the filing person, the filing person's employer, a member of the filing person's immediate family, or the immediate family member's employer is licensed or regulated by, or has a business relationship with, the board or employing entity with which the filing person is or will be associated. This subdivision does not apply to a legislator, a judicial officer, or that legislator's or judicial officer's immediate family.

(7) A list of societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction, in which the public servant or a member of the public servant's immediate family is a director, officer, or governing board member. This subdivision does not apply to a legislator, a judicial officer, or that legislator's or judicial officer's immediate family.

(8) A list of all things with a total value of over two hundred dollars ($200.00) per calendar quarter given and received without valuable consideration and under circumstances that a reasonable person would conclude that the thing was given for the purpose of lobbying, if such things were given by a person not required to report under Chapter 120C of the General Statutes, excluding things given by a member of the filing person's extended family. The list

shall include only those things received during the 12 months preceding the reporting period under subsection (d) of this section, and shall include the source of those things. The list required by this subdivision shall not apply to things of monetary value received by the filing person prior to the time the filing person filed or was nominated as a candidate for office, as described in G.S. 138A-22, or was appointed or employed as a covered person.

(9) A list of any felony convictions of the filing person, excluding any felony convictions for which a pardon of innocence or order of expungement has been granted.

(10) Any other information that the filing person believes may assist the Commission in advising the filing person with regards to compliance with this Chapter.

(11) A list of any nonprofit corporation or organization with which associated during the preceding calendar year, including a list of which of those nonprofit corporations or organizations with which associated do business with the State or receive State funds and a brief description of the nature of the business, if known or with which due diligence could reasonably be known.

(12) A statement of whether the filing person or the filing person's immediate family is or has been a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes within the preceding 12 months.

(13) The name of each business with which associated that the filing person or filing person's immediate family is an employee, director, officer, partner, proprietor, or member or manager."

SECTION 13.(b) G.S. 138A-24(c) reads as rewritten:

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

SECTION 13.(c) G.S. 138A-24(a)(2)i. is recodified as G.S. 138A-24(a)(14).

SECTION 13.(d) G.S. 138A-24(a)(14), as enacted by Section 13(c) of this act, reads as rewritten:

"(14) For any company or business entity listed under subdivision (13) of this subsection and sub-subdivisions ~~f., g., and h.~~ f. and g. of subdivision (2) of this ~~subdivision,~~ subsection, if known, a statement whether ~~any~~ that company or business entity ~~that~~ has any material business ~~dealings, contracts,~~ or ~~other involvement~~ business contracts with the State, or is regulated by the State, including a brief description of the business activity."

SECTION 13.(e) This section becomes effective January 1, 2011, and applies to statements of economic interest filed on or after that date.

SECTION 14. G.S. 138A-41 reads as rewritten:

"§ 138A-41. Other ethics standards.

(a) Nothing in this Chapter shall prevent the Supreme Court, the Committee, the Legislative Services Commission, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, or other boards from adopting additional or supplemental ethics standards applicable to that public agency's operations.

(b) The Governor, as a constitutional officer of the State, shall have the authority to adopt additional and supplemental ethics standards applicable to any appointee of the Governor

to any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, whether advisory or non-advisory in authority. If the Governor adopts such ethics standards, the standards shall be published in the North Carolina Register and made available to each appointee subject to the ethics standards.

(c) The Governor, as a constitutional officer of the State, shall have the authority to adopt minimum ethics standards applicable to any employee of a State agency. If the Governor adopts such standards, the ethics standards shall be published in the North Carolina Register and made available to each employee subject to the ethics standards."

SECTION 15.(a) G.S. 120C-303(a) reads as rewritten:

"(a) Except as provided in subsection (b) of this section, no lobbyist or lobbyist principal may do any of the following:

(1) Knowingly give a gift to a designated individual.

(2) Knowingly give a gift with the intent that a designated individual be ~~the~~ an ultimate recipient."

SECTION 15.(b) G.S. 138A-32(c) reads as rewritten:

"(c) No public servant, legislator, or legislative employee shall knowingly accept a gift from a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes. No legislator or legislative employee shall knowingly accept a gift from liaison personnel designated under Chapter 120C of the General Statutes. No public servant, legislator, or legislative employee shall accept a gift knowing all of the following:

(1) The gift was obtained indirectly from a lobbyist, lobbyist principal, or liaison personnel registered under Chapter 120C of the General Statutes.

(2) The lobbyist, lobbyist principal, or liaison personnel registered under Chapter 120C of the General Statutes intended for ~~the~~ an ultimate recipient of the gift to be a public servant, legislator, or legislative employee as provided in G.S. 120C-303."

SECTION 15.(c) G.S. 138A-32(d1) reads as rewritten:

"(d1) No public servant shall accept a gift knowing all of the following:

(1) The gift was obtained indirectly from a person described under subdivisions (d)(1), (2), and (3) of this section.

(2) The person described under subdivisions (d)(1), (2), and (3) of this section intended for ~~the~~ an ultimate recipient of the gift to be a public servant."

SECTION 15.(d) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 16. G.S. 120C-101(c) reads as rewritten:

"(c) In adopting rules under this Chapter, the Commission is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes, except that the Commission shall comply with G.S. 150B-21.2(d). At least 30 business days prior to adopting a rule, the Commission shall:

(1) Publish the proposed rules in the North Carolina Register.

(2) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet to be posted within five business days.

(3) Notify those on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a rule and of the public hearing.

(4) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.

(5) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted under this subsection becomes effective the first day of the month following the month the final rule is submitted to the Codifier of Rules for entry into the North Carolina Administrative ~~Code.~~Code, and applies prospectively. A rule adopted by the Commission that does not comply with the procedural requirements of this subsection shall be null, void, and without effect. For purposes of this subsection, a rule is any Commission regulation, standard, or statement of general applicability that interprets an enactment by the General Assembly or Congress, or a regulation adopted by a federal agency, or that describes the procedure or practice requirements of the Commission."

SECTION 17.(a) G.S. 120C-100(a)(9) reads as rewritten:

"(9) Lobby or Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that designated individual's immediate family.

b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that designated individual's immediate family with the intention of influencing current or future legislative or executive action, or both.

The ~~term~~ terms "lobby" or "lobbying" ~~does~~ do not include communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both."

SECTION 17.(b) G.S. 120C-100(a)(10) reads as rewritten:

"(10) Lobbyist. – An individual who engages in lobbying for payment and meets any of the following criteria:

a. Repealed by Session Laws 2007-348, s. 8(a), effective October 10, 2007.

b. Represents another person or governmental unit, but is not directly employed by that person or governmental ~~unit, and receives payment for services.~~ unit.~~For the purposes of this sub-subdivision, the term "payment for services" shall not include reimbursement of actual travel and subsistence.~~

c. Contracts for ~~economic consideration~~ payment for ~~the purpose of~~ lobbying.

d. Is employed by a person and a significant part of that employee's duties include lobbying. In no case shall an employee be considered a lobbyist if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)a. of this section or if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)b. of this section.

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700 or registered as liaison personnel under Article 5 of this Chapter."

SECTION 17.(c) G.S. 120C-100(a)(11) reads as rewritten:

"(11) Lobbyist principal and principal. – The person or governmental unit on whose behalf the lobbyist ~~lobbies.~~ lobbies and who makes payment for the lobbying. In the case where a lobbyist is ~~compensated~~ paid by a law firm, consulting firm, or other entity retained by a person or governmental unit for lobbying, the principal is the person or governmental unit whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist principal is the

association or other organization, not the individual members of the association or other organization.

The term "lobbyist principal" shall not include those designating registered liaison personnel under Article 5 of this Chapter."

SECTION 17.(d) G.S. 120C-100(a)(11k) reads as rewritten:

"(11k) ~~Payment for services.~~Payment. – Any money, thing of value, or economic benefit ~~paid~~ conveyed to ~~a~~ the lobbyist for ~~the purpose of lobbying~~ lobbying, other than reimbursement of actual travel, administrative expenses, or subsistence."

SECTION 17.(e) G.S. 120C-100(a)(13) reads as rewritten:

"(13) Solicitation of others. – A solicitation of members of the public to communicate directly with or contact one or more designated individuals ~~for the purpose of influencing or attempting~~ to influence or attempt to influence legislative or executive action to further the solicitor's position on that legislative or executive action, when that request is made by any of the following methods:

a. A broadcast, cable, or satellite transmission.
b. An e-mail communication or a Web site posting.
c. A communication delivered by print media as defined in G.S. 163-278.38Z.
d. A letter or other written communication delivered by mail or by comparable delivery service.
e. Telephone.
f. A communication at a conference, meeting, or similar event.

The term "solicitation of others" does not include communications made by a person or by the person's agent to that person's stockholders, employees, board members, officers, members, subscribers, or other recipients who have affirmatively assented to receive the person's regular publications or notices."

SECTION 17.(f) G.S. 120C-300 reads as rewritten:

"§ 120C-300. Contingency fees prohibited.

(a) No individual shall act as a lobbyist ~~for~~ and receive payment for ~~services~~ lobbying that is dependent upon the result or outcome of any legislative or executive action.

(b) This section shall not apply to an individual doing business with the State who is engaged in sales with respect to that business with the State whose regular remuneration agreement includes commissions based on those sales. For purposes of this subsection, the term "regular remuneration" means any money, thing of value, or economic benefit conferred on or received by the individual in return for services rendered or to be rendered by that individual or another.

(c) Any payment ~~for services~~ to a lobbyist in violation of this section is subject to forfeiture and shall be paid into the Civil Penalty and Forfeiture Fund."

SECTION 17.(g) G.S. 120C-305 reads as rewritten:

"§ 120C-305. Prohibition on the use of cash or credit of the lobbyist.

No lobbyist or another acting on the lobbyist's behalf shall ~~permit~~ lobby by permitting a designated individual, or that designated individual's immediate family member, to use the cash or credit of the lobbyist ~~for the purpose of lobbying~~ unless the lobbyist is in attendance at the time of the reportable expenditure. G.S. 120C-303 applies to this section."

SECTION 17.(h) G.S. 120C-400(a) reads as rewritten:

"§ 120C-400. Reporting of reportable expenditures.

(a) For purposes of this Chapter, all reportable expenditures made for ~~the purpose of~~ lobbying shall be reported, including the following:

(1) Reportable expenditures benefiting or made on behalf of a designated individual in the regular course of that designated individual's employment.

(1a) Reportable expenditures benefiting or made on behalf of a designated individual's immediate family member in the regular course of that immediate family member's employment.

(2) Contractual arrangements or direct business relationships between a lobbyist or lobbyist principal and a designated individual, or that designated individual's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Reportable expenditures reimbursed to a lobbyist in the ordinary course of business by the lobbyist principal or other employer."

SECTION 17.(i) G.S. 120C-402(b) reads as rewritten:

"(b) The report shall include all of the following for the reporting period:

(1) All reportable expenditures made for ~~the purpose of~~ lobbying.

(2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars ($3,000).

(3) Reportable expenditures reimbursed by the lobbyist principal, or another person or governmental unit on the lobbyist principal's behalf.

(4) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9), 138A-32(e)(11), 138A-32(e)(12), and all gifts given under G.S. 138A-32(e)(10) with a value of more than ten dollars ($10.00)."

SECTION 17.(k) G.S. 120C-403 reads as rewritten:

"§ 120C-403. Lobbyist principal's reports.

(a) Each lobbyist principal shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist principal.

(b) The report shall be filed whether or not reportable expenditures are made, shall be due ~~10~~ 15 business days after the end of the reporting period, and shall include all of the following for the reporting period:

(1) All reportable expenditures made for ~~the purpose of~~ lobbying.

(2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars ($3,000).

(3) Recodified as G.S. 120C-403(d).

(4) With respect to each lobbyist registered under G.S. 120C-206, reportable expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those reportable expenditures.

(5) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9), 138A-32(e)(11), 138A-32(e)(12), and all gifts given under G.S. 138A-32(e)(10) with a value of more than two hundred dollars ($200.00).

(6) With respect to each lobbyist registered under G.S. 120C-206, the name of each person or governmental unit not otherwise registered as a lobbyist principal for whom the lobbyist principal directs or permits the lobbyist to lobby, whether for pay or not.

(c) In addition to the reports required by this section, each lobbyist principal incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section.

(d) In addition to the reports required by this section, each lobbyist principal shall annually, in the last report of the registration period under G.S. 120C-200(d), report the total of all payments for lobbying and other activities described in subdivision (2) of subsection (e) of this section made during the registration period, as applicable:

(1) If a lobbyist represents the lobbyist principal, but is not directly employed by that lobbyist principal, the portion of the payment that is for lobbying and to whom it was paid.

(2) If a lobbyist is under contract with the lobbyist principal for lobbying, the portion of the contract that is reasonably allocated for lobbying.

(3) If a lobbyist is a full-time employee of the principal, or is paid by means of an annual fee or retainer, the principal shall estimate and report the portion of the salary, fee, or retainer salary that is reasonably allocated for lobbying.

(e) For purposes of subsection (d) of this section, the following shall apply:

(1) A lobbyist principal may rely upon a statement by the lobbyist estimating the portion of the salary or other payment that is reasonably allocated for lobbying.

(2) In addition to reporting any payment to a lobbyist for lobbying under subsection (d) of this section, a lobbyist principal shall report any payment to a lobbyist for any of the following communications and activities that were used to lobby within the registration period under G.S. 120C-200(d):

a. Research.

b. Drafting of written communications.

c. Monitoring of proposed or pending legislative action or executive action, including time spent preparing communications with the lobbyist principal to relate information on proposed or pending legislative action or executive action.

d. Time spent advising and rendering opinions to the lobbyist principal as to the construction and effect of proposed or pending legislative action or executive action.

(3) A lobbyist principal is required to report any payment to a lobbyist for any of the following:

a. Direct lobbying communications or direct lobbying activities with a designated individual or that designated individual's immediate family.

b. Communications or activities to develop goodwill, including the building or relationships, with a designated individual or that designated individual's immediate family member."

SECTION 17.(l) G.S. 120C-404(b)(1) reads as rewritten:

"(1) All reportable expenditures made for ~~the purpose of~~ lobbying during the reporting period."

SECTION 17.(m) G.S. 120C-501(e) reads as rewritten:

"(e) The Board of Governors of the University of North Carolina and its constituent institutions, or the liaison personnel designated by that board or the constituent institutions, shall not give, for ~~the purpose of~~ lobbying, athletic tickets to any designated individual, except for those who are described in G.S. 138A-3(30)j. or those who are students and receive tickets on the same basis as other students."

SECTION 17.(n) G.S. 120C-800(a) reads as rewritten:

"(a) If a designated individual accepts a reportable expenditure made for ~~the purpose of~~ lobbying with a total value of over two hundred dollars ($200.00) per calendar quarter from a person or group of persons acting together, exempted or not otherwise covered by this Chapter, the person, or group of persons, making the reportable expenditure shall report the date, a

description of the reportable expenditure, the name and address of the person, or group of persons, making the reportable expenditure, the name of the designated individual accepting the reportable expenditure, and the estimated fair market value, or face value if shown, of the reportable expenditure."

SECTION 17.(o) G.S. 138A-3(1) reads as rewritten:

"(1) Blind trust. – A trust established by or for the benefit of a covered person or a member of the covered person's immediate family for ~~the purpose of~~ divestiture of all control and knowledge of assets. A trust qualifies as a blind trust under this subdivision if the covered person or a member of the covered person's immediate family has no knowledge of the holdings and sources of income of the trust, the trustee of the trust is independent of and not associated with or employed by the covered person or a member of the covered person's immediate family and is not a member of the covered person's extended family, and the trustee has sole discretion as to the management of the trust assets."

SECTION 17.(p) G.S. 138A-3(15) reads as rewritten:

"(15) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, liaison personnel, or a person described under G.S. 138A-32(d)(1), (2), or (3). The following shall not be considered gifts under this subdivision:

a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.

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

c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for ~~the purpose of~~ lobbying.

d. Academic or athletic scholarships based on the same criteria as applied to the public.

e. Campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

f. Expressions of condolence related to a death of an individual, sent within a reasonable time of the death, if the expression is one of the following:

1. A sympathy card, letter, or note.
2. Flowers.
3. Food or beverages for immediate consumption.
4. Donations to a religious organization, charity, the State or a political subdivision of the State, not to exceed a total of two hundred dollars ($200.00) per death per donor."

SECTION 17.(q) G.S. 138A-13(f) reads as rewritten:

"(f) This section shall apply to judicial officers only for ~~the purpose of~~ advice related to Article 3 of this Chapter."

SECTION 17.(r) G.S. 138A-24(a)(8) reads as rewritten:

"(8) A list of all things with a total value of over two hundred dollars ($200.00) per calendar quarter given and received without valuable consideration and under circumstances that a reasonable person would conclude that the thing was given for ~~the purpose of~~ lobbying, if such things were given by a person not required to report under Chapter 120C of the General Statutes, excluding things given by a member of the filing person's extended family. The list

shall include only those things received during the 12 months preceding the reporting period under subsection (d) of this section, and shall include the source of those things. The list required by this subdivision shall not apply to things of monetary value received by the filing person prior to the time the filing person filed or was nominated as a candidate for office, as described in G.S. 138A-22, or was appointed or employed as a covered person."

SECTION 17.(s) G.S. 138A-32(e)(10) reads as rewritten:

"(10) Gifts given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship provided all of the following conditions are met:

a. The relationship is not related to the public servant's, legislator's, or legislative employee's public service or position.

b. The gift is made under circumstances that a reasonable person would conclude that the gift was not given ~~for the purpose of lobbying.~~ to lobby."

SECTION 17.(t) This section is effective January 1, 2011, and applies to offenses committed on or after that date, and reports filed on or after that date.

SECTION 18.(a) G.S. 126-23 reads as rewritten:

"§ 126-23. Certain records to be kept by State agencies open to inspection.

(a) Each department, agency, institution, commission and bureau of the State shall maintain a record of each of its employees, showing the following information with respect to each such employee:

(1) ~~name,~~Name.

(2) ~~age,~~Age.

(3) ~~date~~Date of original employment or appointment to the State ~~service,~~service.

(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its ~~possession,~~possession.

(5) ~~current position,~~ Current position.

(6) ~~title,~~Title.

(7) ~~current salary,~~Current salary.

(8) ~~date~~Date and amount of ~~most recent~~each increase or decrease in ~~salary,~~salary with that department, agency, institution, commission, or bureau.

(9) ~~date~~Date and type of ~~most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification,~~classification with that department, agency, institution, commission, or bureau.

(10) ~~and the~~The office or station to which the employee is currently assigned.

(b) For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Subject only to rules and regulations for the safekeeping of the records, adopted by the State Personnel Commission, every person having custody of such records shall permit them to be inspected and examined and copies thereof made by any person during regular business hours. Any person who is denied access to any such record for the purpose of inspecting, examining or copying the same shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 18.(b) G.S. 115C-320 reads as rewritten:

"§ 115C-320. Certain records open to inspection.

(a) Each local board of education shall maintain a record of each of its employees, showing the following information with respect to each employee:

(1) ~~name,~~ Name.
(2) ~~age,~~ Age.
(3) ~~date~~Date of original employment or ~~appointment,~~appointment.
(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the board has the written contract or a record of the oral contract in its ~~possession,~~possession.
(5) ~~current position,~~Current position.
(6) ~~title,~~Title.
(7) ~~current salary,~~Current salary.
(8) ~~date~~Date and amount of ~~most recent~~ each increase or decrease in ~~salary,~~ salary with that local board of education.
(9) ~~date~~Date and type of ~~most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification, and~~classification with that local board of education.
(10) ~~the~~The office or station to which the employee is currently assigned.

(b) For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Subject only to rules and regulations for the safekeeping of records adopted by the local board of education, every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours. The name of a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes shall not be open to inspection and shall be redacted from any record released pursuant to this section. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 18.(c) G.S. 115D-28 reads as rewritten:

"**§ 115D-28. Certain records open to inspection.**

(a) Each board of trustees shall maintain a record of each of its employees, showing the following information with respect to each employee:

(1) ~~name,~~ Name.
(2) ~~age,~~ Age.
(3) ~~date~~Date of original employment or ~~appointment,~~appointment.
(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the board has the written contract or a record of the oral contract in its ~~possession,~~possession.
(5) ~~current position,~~ Current position.
(6) ~~title,~~ Title.
(7) ~~current salary,~~ Current salary.
(8) ~~date~~Date and amount of ~~most recent~~each increase or decrease in ~~salary,~~ salary with that community college.
(9) ~~date~~Date and type of ~~most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification, and~~classification with that community college.
(10) ~~the~~The office or station to which the employee is currently assigned.

(b) For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Subject only to rules and regulations for the safekeeping of records adopted by the board of trustees, every person having custody of the records shall permit them to be inspected

and examined and copies made by any person during regular business hours. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 18.(d) G.S. 122C-158(b) reads as rewritten:

"(b) The following information with respect to each employee is a matter of public record:

(1) ~~name;~~ Name.
(2) ~~age;~~ Age.
(3) ~~date~~Date of original employment or appointment to the area ~~authority;~~authority.
(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its ~~possession;~~possession.
(5) ~~current position~~ Current position.
(6) ~~title;~~ Title.
(7) ~~current salary;~~ Current salary.
(8) ~~date~~Date and amount of ~~most recent~~each increase or decrease in ~~salary;~~ salary with that area authority.
(9) ~~date~~ Date and type of ~~the most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification; and~~classification with that area authority.
(10) ~~the~~ The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The area authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying during regular business hours, subject only to rules for the safekeeping of public records as the area authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue these orders."

SECTION 18.(f) G.S. 153A-98(b) reads as rewritten:

"(b) The following information with respect to each county employee is a matter of public record:

(1) ~~name;~~ Name.
(2) ~~age;~~ Age.
(3) ~~date~~ Date of original employment or appointment to the county ~~service;~~service.
(4) ~~the~~ The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the county has the written contract or a record of the oral contract in its ~~possession;~~possession.
(5) ~~current position~~ Current position.
(6) ~~title;~~ Title.
(7) ~~current salary;~~ Current salary.
(8) ~~date~~Date and amount of ~~the most recent~~each increase or decrease in ~~salary;~~ salary with that county.
(9) ~~date~~ Date and type of ~~the most recent~~each promotion, demotion, transfer, suspension, separation or other change in position ~~classification; and~~classification with that county.
(10) ~~the~~ The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The board of county commissioners shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the board of commissioners may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

SECTION 18.(g) G.S. 160A-168(b) reads as rewritten:

"(b) The following information with respect to each city employee is a matter of public record:

(1) ~~name;~~ Name.
(2) ~~age;~~ Age.
(3) ~~date~~Date of original employment or appointment to the ~~service;~~service.
(4) ~~the~~ The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the city has the written contract or a record of the oral contract in its ~~possession;~~possession.
(5) ~~current position~~ Current position.
(6) ~~title;~~Title.
(7) ~~current salary;~~Current salary.
(8) ~~date~~Date and amount of ~~the most recent~~each increase or decrease in ~~salary;~~ salary with that municipality.
(9) ~~date~~Date and type of ~~the most~~each recent promotion, demotion, transfer, suspension, separation, or other change in position ~~classification; and~~classification with that municipality.
(10) ~~the~~The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The city council shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the city council may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

SECTION 18.(h) G.S. 162A-6.1(b) reads as rewritten:

"(b) The following information with respect to each authority employee is a matter of public record:

(1) ~~name;~~ Name.
(2) ~~age;~~ Age.
(3) ~~date~~Date of original employment or appointment to the ~~service;~~service.
(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the authority has the written contract or a record of the oral contract in its ~~possession;~~possession.
(5) ~~current position~~ Current position.
(6) ~~title;~~ Title.
(7) ~~current salary;~~Current salary.

(8) ~~date~~Date and amount of ~~the most recent~~each increase or decrease in ~~salary;~~ salary with that authority.

(9) ~~date~~ Date and type of ~~the most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification; and~~classification with that authority.

(10) ~~the~~The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

SECTION 18.(i) This section becomes effective October 1, 2010.

SECTION 19.(a) G.S. 120C-600 is amended by adding a new subsection to read:

"(d) The Secretary shall publish annual statistics on complaints received and systematic reviews conducted under this section, including the number of systematic reviews, the number of complaints, the number of apparent violations of this Chapter referred to a district attorney, the number of complaints dismissed, and the number and age of complaints pending. Subject to the provisions of Chapter 132 of the General Statutes, the levy of all civil fines, including the amount of the fine and the identity of the person or governmental unit against whom it was levied, shall be a public record as defined in G.S. 132-1(a)."

SECTION 19.(b) G.S. 120C-601 is amended by adding a new subsection to read:

"(d) The Commission shall publish annual statistics on complaints, including the number of complaints, the number of apparent violations of this Chapter referred to a district attorney, the number of dismissals, and the number and age of complaints pending."

SECTION 20.(a) Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.3E. Mediation of public records disputes.**

(a) Voluntary Mediation. – The parties to a public records dispute under Chapter 132 of the General Statutes may agree at anytime prior to filing a civil action under Chapter 132 of the General Statutes to mediation of the dispute under the provisions of this section. Mediation of a public records dispute shall be initiated by filing a request for mediation with the clerk of superior court in a county in which the action may be brought.

(b) Mandatory Mediation. – Subsequent to filing a civil action under Chapter 132 of the General Statutes, a person shall initiate mediation pursuant to this section. Such mediation shall be initiated no later than 30 days from the filing of responsive pleadings with the clerk in the county where the action is filed.

(c) Initiation of Mediation. – The Administrative Office of the Courts shall prescribe a request for mediation form. The party filing the request for mediation shall mail a copy of the request by certified mail, return receipt requested, to each party to the dispute. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(d) Mediation Procedure. – Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(e) Waiver of Mediation. – The parties to the dispute may waive the mediation required by this section by informing the mediator of the parties' waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting.

(f) Certification That Mediation Concluded. – Immediately upon a waiver of mediation under subsection (e) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party.

(g) Time Periods Tolled. – Time periods relating to the filing of a claim or the taking of other action with respect to a public records dispute, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (f) of this section.

(h) Nothing in this section shall be prevent a party seeking production of public records from seeking injunctive or other relief, including production of public records prior to any scheduled mediation."

SECTION 20.(b) G.S. 7A-38.2(a) reads as rewritten:

"(a) The Supreme Court may adopt standards of conduct for mediators and other neutrals who are certified or otherwise qualified pursuant to G.S. 7A-38.1, 7A-38.3, 7A-38.3B, 7A-38.3D, 7A-38.3E, and 7A-38.4A, or who participate in proceedings conducted pursuant to those sections. The standards may also regulate mediator and other neutral training programs. The Supreme Court may adopt procedures for the enforcement of those standards."

SECTION 20.(c) G.S. 132-9 reads as rewritten:

"**§ 132-9. Access to records.**

(a) Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying, and the court shall have jurisdiction to issue such ~~orders.~~ orders if the person has complied with G.S. 7A-38.3E. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(b) In an action to compel disclosure of public records which have been withheld pursuant to the provisions of G.S. 132-6 concerning public records relating to the proposed expansion or location of particular businesses and industrial projects, the burden shall be on the custodian withholding the records to show that disclosure would frustrate the purpose of attracting that particular business or industrial project.

(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court shall allow ~~the prevailing~~ a party seeking disclosure of public records who substantially prevails to recover its reasonable attorneys' fees if attributed

to those public ~~records, unless the court finds the agency acted with substantial justification in denying access to the public records or the court finds circumstances that would make the award of attorneys' fees unjust.~~records. The court may not assess attorneys' fees against the governmental body or governmental unit if the court finds that the governmental body or governmental unit acted in reasonable reliance on any of the following:

(1) A judgment or an order of a court applicable to the governmental unit or governmental body.

(2) The published opinion of an appellate court, an order of the North Carolina Business Court, or a final order of the Trial Division of the General Court of Justice.

(3) A written opinion, decision, or letter of the Attorney General.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court shall assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs."

SECTION 20.(d) This section becomes effective October 1, 2010, and applies to actions filed on or after that date.

SECTION 21.(a) G.S. 138A-14(b) reads as rewritten:

"(b) The Commission shall ~~make~~ offer basic ethics education and awareness presentations to all public servants and their immediate staffs, upon their election, appointment, or employment, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant shall participate in an ethics presentation approved by the Commission within six months of the public servant's election, reelection, appointment, or employment, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate."

SECTION 21.(b) G.S. 138A-24(c2) is recodified as G.S. 138A-22(c2).

SECTION 21.(c) The catch line to G.S. 138A-37 of the General Statutes reads as rewritten:

"**§ 138A-37. Legislator participation in ~~official~~ legislative actions.**"

SECTION 21.(d) G.S. 138A-38(a)(6) and (7) read as rewritten:

"**§ 138A-38. Permitted participation exception.**

(a) Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may participate in an official action or legislative action under any of the following circumstances except as specifically limited:

...

(6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action because the covered person is disqualified from acting under ~~G.S. 130-36,~~ G.S. 138A-36, G.S. 138A-37, or this section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.

(7) When a public servant notifies the Commission in writing that the public ~~servant judicial employee,~~ servant, or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals

having legal authority to take an official action, and the public servant discloses in writing the circumstances and nature of the conflict of interest."

SECTION 21.(e) G.S. 120-104(c) reads as rewritten:

"(c) A legislator who acts in reliance on a formal advisory opinion issued by the Committee under this section shall be entitled to the immunity granted under ~~G.S. 138A-13(b).~~ G.S. 138A-13(b1)."

SECTION 21.(f) G.S. 120C-800(b) reads as rewritten:

"(b) If the person making the reportable expenditure in subsection (a) of this section is outside North Carolina, and the designated individual accepting the reportable expenditure is also outside North Carolina at the time the designated individual accepts the reportable expenditure, then the designated individual accepting the reportable expenditure shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with ~~G.S. 138A-24(a)(2).~~G.S. 138A-24(a)(8)."

SECTION 22. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 961:
Gov't Ethics and Campaign Reform Act of 2010

2009-2010 General Assembly

Committee:	Senate Floor	**Date:**	June 22, 2010
Introduced by:	Reps. Glazier, Stam, Ross, Goodwin	**Prepared by:**	R. Erika Churchill
Analysis of:	Fifth Edition		Committee Counsel

SUMMARY: ***House Bill 961 would make various changes to the campaign finance laws, public records laws, ethics laws, and lobbying laws.***

CURRENT LAW & BILL ANALYSIS:

Sections 1-2. Public financing for certain council of state races.

North Carolina has two public campaign financing programs:

- A program that covers all nonpartisan elections for State Supreme Court and Court of Appeals, which was enacted in 2002 and used in the elections of 2004, 2006, and 2008.
- A program that covers partisan elections for three Council of State offices – Auditor, Commissioner of Insurance, and Superintendent of Public Instruction, which was used in the 2008 election.

In brief, both programs work as follows: Qualified candidates who agree to limits on private fundraising are eligible to receive public money to fund their camapgins. Candidates qualify for the program by pledging to abide by contribution and spending limits and by raising a certain amount in "qualifying contributions," small amounts given by individual voters. The basic public grants from the Fund do not come until after the primary, and with some exceptions the candidates are limited in their spending to the amount of those grants. If participating candidates are faced with opponents, in primary or general election, who spend more than the participating candidates can match, or independent expenditures or electioneering communications targeted at them beyond what they can spend, the Fund provides "matching funds" which are additional funds to match an opponent's expenditures and can be used by participating candidates to defend themselves. Candidates may opt out at any time, and repay the monies received from the Fund.

Both programs also require the State Board of Elections to produce and distribute a Voter Guide to as many voting-age NC residents as possible. The Voter Guide contains information about the affected elections and space for candidates to present themselves without cost.

Section 1 would add the Offices of Agriculture, Labor, Secretary of State, and State Treasurer to the Council of State offices eligible to participate in the Voter-Owned Elections program, effective 2012 and Section 2 would add the office of Attorney General effective for the 2016 election. Section 1(b) would impose various fees on certain activities of these offices, with the funds collected to be transferred to the Voter-Owned Election Fund. Section 1 becomes effective October 1, 2010 and Section 2 becomes effective July 1, 2015.

Sections 3 and 4. Revisions to criminal provisions.

Section 3: Currently, it is unlawful for a State employee or a person appointed to non-elected State office to coerce political contributions or support from a State employee or applicant subject to the State Personnel Act by threatening discipline or promising preferential personnel treatment.

Section 3 would expand this provision by making it unlawful for a member of the Council of State to coerce political contributions or support by threatening discipline or promising preferential treatment to the following groups of people:

- Persons doing or seeking to do business with the Council of State member's department.
- Persons engaged in activities that are regulated or controlled by the Council of State member's department.
- Persons who have financial interests that may be substantially affected by the performance or nonperformance of the Council of State member's official duties.

A violation of this section is a Class 2 misdemeanor. Section 3 becomes effective December 1, 2010, and applies to offenses committed on or after that date.

Section 4: Currently under G.S. 14-234, no public officer or employee involved in making or administering a contract on behalf of a public agency may solicit or receive a gift, reward, or promise of a reward in exchange for recommending, influencing, or attempting to influence the award of the contract. Section 4 would expand this by also prohibiting public officers and employees from soliciting or receiving favors, services, and promises of future employment.

Section 4 becomes effective December 1, 2010 and applies to offenses committed on or after that date.

Section 5. Revolving Door. (House Bill 1136, Representatives Ross & Stam)

All agencies and constitutional officers of the State with staff must designate *liaison personnel* to lobby for legislative action. G.S. 120C-500(a). Liaison personnel, by definition, are employees of the State whose principal duties include lobbying legislators or legislative employees. G.S. 120C-100(a)(8). Liaison personnel must register and make reports with the Secretary of State and are subject to the gift ban. G.S. 120C-501.

Currently, the lobbying laws limit when certain people may register as a lobbyist.

- **Legislators-** No legislator or former legislator may register as a lobbyist:
    - While in office
    - Before the later of the close of session in which the legislator served or six months after leaving office. G.S. 120C-304 (a).
- **Constitutional Officers of the State-** Members of the Council of State may not register as a lobbyist while in office or within six months after leaving office. G.S. 120C-304 (b).
- **Heads of Principal State Departments-** Heads of all principal State departments who are appointed by the governor may not register as a lobbyist within six months after separation from employment as a public servant. G.S. 120C-304 (c). The principal departments include: Cultural Resources, Health and Human Services, Revenue, Crime Control and Public Safety, Correction, Environment and Natural Resources, Transportation,

Administration, Commerce, Community Colleges System Office, and Juvenile Justice and Delinquency Prevention. G.S. 143B-6.

Section 5 would increase the revolving door time frame from the current six months to one year for legislators, Council of State members and principal department heads. The bill would limit all State agency employees from registering to lobby the State agency that previously employed the former employee within one year after separation from that State agency.

Section 5 becomes effective October 1, 2010, and applies to individuals leaving office or employment on or after that date.

Sections 6, 7, 8. Campaign Finance.

Section 6: The State Board of Elections has the authority to prescribe and furnish certain statements required to be filed by candidates, committees, and county boards. Section 6 would authorize the State Board of Elections to hire or contract with a private investigator to investigate alleged violations of incorrect or unfiled statements filed by candidates, committees, and county boards.

Section 7: It is currently unlawful for an individual, political committee, or other entity to make a contribution anonymously or in the name of another. G.S. 163-278.14(a). It is also unlawful for corporations, business entities, labor unions, professional associations and insurance companies to make campaign contributions to candidates or political committees or to compensate, reimburse or indemnify an individual for money or property for making contributions or expenditures. G.S. 163-278.19(a). A violation of this section is a Class 2 misdemeanor.

Section 7 provides that a person who intentionally violates G.S. 163-278.14(a) or G.S. 163-278.19(a), and the unlawful contributions total more than $10,000 per election, is guilty of a Class I felony. This prohibition shall not apply to contributions by individuals with the lawful authority to act on behalf of another individual. This section becomes effective December 1, 2010 and applies to offenses committed on or after that date.

Section 8: Section 8 mandates that the State Board of Elections create an easily searchable database to provide any member of the public with access to the database to search by geographic location, occupation, employer, contributor, or contributee, within an election cycle and over a period of time as specified by the searcher.

Section 9. NC OpenBook.

Section 9 codifies the Governor's Executive Order Number 4 to require the Office of State Budget and Management and Information Technology Services to build and maintain a single, searchable website and database on State spending for grants and contracts awarded in amounts in excess of $10,000. The following information provided for each contract or grant shall include: The name of the entity receiving the award; the amount of the award; the location of the entity receiving the award; expected outcomes of the contract or grant and specific deliverables required; and contact information for the responsible state government officer or administrator of the contract or grant.

Section 10 -14. Ethics Act revisions.

Sections 10 and 11: Under current law, public servants include the Council of State, department heads, chief deputies, employees of the Office of the Governor, judicial employees, members of non-advisory

boards, members of the Board of Governors, University boards of trustees, State Board of Community Colleges, and members of the boards of trustees of each community college. Public servants are covered by the State Government Ethics Act and are subject to the gift ban and are required to file an annual statement of economic interest.

Section 10 adds the following as public servants: the Executive Director and Assistant Executive Director of the State Ethics Commission; the director of the Office of State Personnel; the State Controller; the chief information officer, deputy chief information offices, chief financial officers, and general counsel of the Office of Information Technology; the director of the State Museum of Art; the executive director of the Agency for Public Telecommunication; the Commissioner of Motor Vehicles; the Commissioner of Banks, and the chief deputy commissioners of the Banking Commission; the executive director of the North Carolina Housing Finance Agency; and the executive director, chief financial officer, and chief operating officer of the North Carolina Turnpike Authority.

Section 11 adds the Governor's Crime Commission as a covered board, which means its members are public servants under the State Government Ethics Act.

Section 12: Currently, legislators, judicial officers and public servants are required to file a statement of economic interest upon election, appointment, or employment and annually thereafter. Candidates for legislative or constitutional offices are also required to file a statement of economic interest when filing for candidacy. Section 12 would also require a statement of economic interest to be filed on or before April 15th of the year following the year a covered person leaves office or dies in office.

Section 13: Section 13 makes various changes to the annual statement of economic interest required to be filed by covered persons.

- Removes the requirement that statements of economic interest be sworn.
- Adds sole proprietorships to the list of business entities that must be listed on the statement of economic interest.
- Clarifies that the statement of economic interest should include the name of each business with which the filing person or filing person's immediate family is an employee, director, officer, partner, proprietor, or member or manager, and identifies which of these businesses do business with the State.

Section 13 becomes effective January 1, 2011, and applies to statements of economic interest filed on or after that date.

Section 14: Section 14 authorizes the Governor to adopt additional and supplemental ethics standards applicable to any appointee of the Governor to any State board, commission or similar public body. It also authorizes the Governor to adopt minimum ethics standards applicable to any employee of a State agency. The Governor is required to publish the standards in the North Carolina Register and make them available to each appointee or employee subject to the standards.

Section 15 Gift Ban Clarification. (Senate Bill 1255, Senator Goss)

Under current law, unless an exception to the gift ban applies, no lobbyist or lobbyist principal may knowingly give a gift to a legislator, legislative employee or public servant or give a gift with the intent that a legislator, legislative employee, or public servant be the ultimate recipient of the gift. Section 15 clarifies that an indirect gift can include gifts where a designated individual is not the sole recipient.

Section 15 becomes effective December 1, 2010, and applies to offenses committed on or after that date.

Section 16 Rule making for SEC. (Senate Bill 1380, Senator Clodfelter)

Under current law, the State Ethics Commission is required to follow a truncated rule-making procedure when adopting a rule. At least 30 business days prior to adopting a rule, the Commission shall publish the proposed rule and notice of the hearing in the North Carolina Register, notify interested parties, accept comments, and hold a public hearing.

Section 16 states that a rule adopted by the Commission that does not comply with the above mentioned procedural requirements is null, void, and without effect. It also defines a rule is any Commission regulation, standard, or statement of general applicability that interprets an enactment by the General Assembly or Congress, a regulation adopted by a federal agency, or that describes the procedure or practice requirements of the Commission.

Section 17 Lobbyist Principal Reporting. (Senate Bill 1299, Senator Goss)

Currently, the term 'lobbying' is defined as influencing or attempting to influence legislative or executive action, or both, through direct communications and activities with a designated individual or developing goodwill through communications or activities with designated individuals with the intention of influencing current or future legislative or executive action, or both. A lobbyist is currently defined as an individual who is hired to engage in lobbying and meets certain criterion and a lobbyist principal is currently defined as a person or governmental unit on whose behalf a lobbyist lobbies.

Section 17 clarifies the definition of lobbyist so that the relationship between a lobbyist and a lobbyist principal is triggered only when the relationship includes payment. Section 17 changes the definition of a lobbyist to an individual who engages in lobbying for payment and meets certain criterion. Section 17 also makes corresponding changes to the definition of lobbyist principal to clarify that a lobbyist principal is a person or governmental unit on whose behalf a lobbyist lobbies and who makes payment for that lobbying. Section 17 also sets out what information about the payment is to be reported by the lobbyist principal annually.

Section 17 becomes effective January 1, 2011, and applies to offenses committed on or after that date, and reports filed on or after that date.

Section 18 Personnel Records.

Personnel files of State and local government employees are confidential and cannot be released, except for certain items of information which must be maintained as separate public records. Generally, the items that may be released as public records are: name; age; date of original employment or appointment; current position; title; current salary; date and amount of most recent increase or decrease in salary; date of most recent promotion, demotion, transfer, suspension, separation or other change in position classification; and office or station to which the employee is currently assigned. Similar statutes govern the personnel records of: local boards of education, community colleges, area mental health authorities, State employees, public health authorities, counties, cities, and water and sewer authorities.

Section 18 would also require release of the date and amount of each salary change, and the date and type of each promotion, demotion, transfer, suspension, separation or other change in position classification, with all being required of the employing agency or political subdivision.

Section 18 becomes effective October 1, 2010.

Section 19 Penalties of SEC and SOS published.

Under current law, the Legislative Ethics Committee is required to publish annually statistics on the number of complaints filed, considered, dismissed, resulting in admonishment, referred to the appropriate house for appropriate action, referred for criminal prosecution and the number and age of complaints pending action by the Legislative Ethics Committee.

Section 19 requires the Secretary of State and the State Ethics Commission to publish similar annual statistics for complaints of violations of the lobbying law.

All civil fines, including the amount of the fine and the identity of the person or governmental unit against whom it was levied, shall be public record.

Section 20 Mediation of public records disputes.

Section 20 amends the access to public records law by requiring mediation of public records disputes. Mediation may be initiated prior to suit being filed, or within 30 days from the filing of responsive pleadings with the clerk.

Mediation is initiated by filing a request for mediation with the clerk of court in a county in which the action may be brought. The mediation shall be conducted in accordance with the standards for mediated settlements of civil cases. Mediation may be waived if all parties agree and the mediator is so informed in writing. At the conclusion of mediation, the mediator shall prepare and file a certification stating the date on which the mediation was concluded and the general results of the mediation.

If a party successfully compels the disclosure of public records, the court shall allow a party seeking disclosure of public records who substantially prevails to recover its reasonable attorneys' fees. The court may not assess attorneys' fees against a governmental body or governmental unit if the court finds the governmental body or governmental unit acted in reasonable reliance on a court order, appellate decision, or opinion of the Attorney General. Nothing in this section prevent seeking production of public records under Chapter 132 of the General Statutes.

Section 20 becomes effective October 1, 2010, and applies to actions filed on or after that date.

Section 21 Technical corrections. (Senate Bill 1239, Senator Goss)

Section 21 makes various technical and clarifying changes to the State Government Ethics Act and Lobbying laws.

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law.

H961-SMST-85(e5) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 4

HOUSE BILL 944
Committee Substitute Favorable 4/23/09
Committee Substitute #2 Favorable 5/5/09
Fourth Edition Engrossed 5/6/09

Short Title: Disclosure by Appointees. (Public)

Sponsors:

Referred to:

April 1, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR DISCLOSURE OF CAMPAIGN CONTRIBUTION ACTIVITY BY APPOINTEES TO POSITIONS IN STATE GOVERNMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.23A. Disclosure of contribution-related activity involving appointees to positions in State government.**

(a) Definitions. – As used in this section, the following definitions apply:

(1) "Date of appointment." – The day of the public announcement by the appointing authority that the individual will be appointed to the position or the day the appointee begins serving in the position, whichever occurs first. Beginning on the date of appointment, the individual subject to the appointment is, for purposes of this section, the "appointee." For purposes of this section, individuals elected to the Board of Governors of The University of North Carolina and elected to the State Board of Community Colleges by the General Assembly are appointees.

(2) "Fund-raising." – The receiving and forwarding of a contribution, or the activity that results in an individual receiving, directly or indirectly, written acknowledgement from a contributor or recipient of the contribution, or from the agent of that contributor or recipient, that the individual is responsible for a contribution.

(3) "Immediate family." – As defined in G.S. 138A-3(17).

(4) "Relevant political campaign." – A candidate for the office with authority to make the appointment or a political committee controlled by a candidate for the office with authority to make the appointment.

(b) Initial Report by Appointees. – An appointing authority shall notify an appointee of the appointment and duty to report within five days after the date of appointment, and shall make available to the appointee the appropriate forms for reporting. Within five days after notice to the appointee by the appointing authority, the appointee shall submit the following reports to the State Board of Elections in the form required by the State Board for contributions made in the two years preceding the date of appointment:

(1) A list of contributions made by the appointee or a member of the appointee's immediate family to a relevant political committee. A report is not required

if the total of those contributions is less than one thousand dollars ($1,000) during the period covered by the report. This subdivision applies to appointees to the Governor's Cabinet, to the Supreme Court, the Court of Appeals, the superior court, and the district court, and to any board or commission exercising executive powers. It does not apply to appointees to any board or commission that has advisory authority only.

(2) A list of contributions resulting from the appointee's fund-raising for a relevant political committee. A report is not required if the total of such contributions is less than one thousand dollars ($1,000) during the period covered by the report. This subdivision applies only to appointees to the Governor's Cabinet, to the Supreme Court, the Court of Appeals, the superior court, and the district court, and to the following State boards and commissions:

a. Alcoholic Beverage Control Commission.
b. Coastal Resources Commission.
c. State Board of Community Colleges.
d. State Board of Education.
e. State Board of Elections.
f. Employment Security Commission.
g. Environmental Management Commission.
h. Industrial Commission.
i. State Personnel Commission.
j. Rules Review Commission.
k. Board of Transportation.
l. Board of Governors of The University of North Carolina.
m. Utilities Commission.
n. Wildlife Resources Commission.

(c) Timing and Manner of Reporting by the State Board of Elections. – Within three business days of receiving the reports required by subsection (b) of this section, the State Board shall make the reports available in a manner that facilitates access and inspection by the public, including on a page of the State Board's Internet Web site devoted to reporting required by this section. The State Board shall check the reports provided by the appointee for consistency with the State Board's other campaign finance records.

(d) A violation of a duty under this section by an appointee is a Class 2 misdemeanor."

SECTION 2. G.S. 143B-350(i) is repealed.

SECTION 3. This act becomes effective January 1, 2010, and applies to contributions made on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 24, 2010 9 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Gene Rogers	NMRS
Chris Killian	Nelson Mullins
Kevin Leonard	NCACC
Brent Woodcox	Sen. Phil Berger
TROY SHELTON	DURHAM
Fred Baggett	Smith Moore Leatherwood
Brian Dempsey	MWC
[illegible]	Civitas
Jeff Mixon	AFP
John Hardin	NFIB N.C. Home Council
[illegible]	DMAC Insurance

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 24, 2010 9 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cuer	BPMHL
A Solari	DST
Damon Circosta	NC Vote-Ed
J Pinsky	Gov Lobby reform
Allison Calder	Paulatics
Jon Politicks	NCAHA
Peter Daniel	NC Farm Bureau
Ray Starling	NCDA&CS
David Anders	PFFPNC
David Heiman	NC Center for Nonprofits
Sarah Preston	ACLU-NC

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 24, 2010 9 a.m. Room 1027

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Matthew Eisley	Smith Anderson
Chrick Solengco	Nationwide Ins.
Susan Valauri	Nationwide
John Bowdish	AstraZeneca
Ben Violet	N & O
Robert Wilson	SOS
Peyton Mayo	
Kellie Skipper	John Locke Foundation
Dave Foster	City of Charlotte

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 24, 2010 9 a.m. Room 1027

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Paul Stock	NCBA
Rick Zechini	NC Assoc. of Realtors
Bill Scoggin	TBS
Will Polk	NC Office of Gov
Phil Feagan	Gov's Office
Cameron Hinkley	Electricities of NC
Haley Daynes	SOS
Joal Broun	SOS
Daniel Baum	Troutman Sanders
David Crawford	AIANC

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 24, 2010 9 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
MaryBe McMillan	NC AFL-CIO
Marge Freman	NCAE
J Bussian	NC Press Assn
Becki Gray	927
Dallas Woodhouse	AFP-NC
Kathleen Edwards	State Ethics Comm.
Perry Newson	" " "
	Misc
Jennifer Haigwood	NCDOL
John Hamani	NCDOL
Artana	NCDOL

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

June 24, 2010 9 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
DES	NCGA
Will Parry - Thom	NCHFA
Carley Ruff	NCHC
MIKE MANN	NCBAA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

MINUTES

June 29, 2010
Room 1027
Legislative Building
10 a.m.

Welcome and Attendance

The Senate Judiciary I Committee met Thursday, June 29, 2010 in Room 1027 of the Legislative Building. Committee Chairman Martin Nesbitt presided, calling the meeting to order at 10:05 a.m.

In attendance with Chairman Nesbitt were Committee Vice Chairman Dan Clodfelter and Vice Chairman Josh Stein. Also present were members Senator Charlie Albertson, Senator Phil Berger, Senator Andrew Brock, Senator Harry Brown, Senator Margaret Dickson, Senator Malcolm Graham, Senator David Hoyle, Senator Clark Jenkins, Senator Ellie Kinnaird, Senator Floyd McKissick, Senator David Rouzer, Senator Richard Stevens and Senator Jerry Tillman. Staff present was Committee Counsel Erika Churchill, Giles Perry, Bill Patterson Susan Sitze, and Committee Assistant Jessica Kozma Proctor.

House Bill 1412

Chairman Nesbitt called House Bill 1412, "Courts Martial Amendments" as the Committee's first order of business. A Proposed Committee Substitute was distributed to members. The PCS was adopted for discussion by unanimous vote after a motion to adopt by Senator Hoyle. With little discussion Senator Tillman moved for favorable report, unfavorable as to original bill. The motion carried by unanimous vote.

A copy of this PCS may be found at http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H1412v1.pdf

House Bill 614

Chairman Nesbitt called House Bill 614, entitled "Absentee Voting Improvements." A PCS was distributed to member and moved for adoption by Senator Brunstetter. The motion carried unanimously. Chairman Nesbitt called for

discussion among members. Hearing no discussion, Senator Jenkins motioned for favorable report, unfavorable as to original bill. The motion carried unanimously.

A copy of the distributed PCS may be found at http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H614v2.pdf

House Bill 726

House Bill 726, "Clarify Expunctions," was the Committee's third order of business. The long title reads as follows: "An act to provide that a person's record may be expunged for a first misdemeanor offense committed when the person was less than eighteen years old even though the person is eighteen years or older at the time of the conviction; to provide that a person's record may be expunged for a first misdemeanor possession of alcohol offense committed when the person was less than twenty-one years old even though the person is twenty-one years or older at the time of the conviction; to require state and national criminal record checks when required to obtain a criminal record check would not be deemed to have knowledge of offenses expunged under the statute."

A PCS distributed to membership was adopted for discussion by a motion by Senator Tillman. Representative Spear and Representative Moore were present to speak to the bill. With minimal discussion, Senator McKissick moved for favorable report, unfavorable as to the original bill. The motion carried unanimously.

A copy of this PCS may be found at: http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H726v2.pdf

House Bill 666

Chairman Nesbitt called on the Committee to discuss House Bill 666, "Clarify Status of DWI Treatment Courts: an act to clarify that DWI treatment courts are a type of drug treatment court under the drug treatment court act."

Senator Albertson moved for adoption of a PCS of the Bill distributed to members. The motion carried unanimously. With no discussion, Senator Tillman moved for favorable report. The motion carried unanimously.

A copy of the PCS relevant to the day's meeting may be found at: http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H666v1.pdf

House Bill 748

Chairman Nesbitt told the Committee that House Bill 748 would be added to the day's discussion. The bill is: "Electioneering at Early Voting Sites: An act to forbid county boards of elections from designating three early voting sites in non-public buildings that do not allow four electioneering, except that electioneering may be restricted to five or more locations on the property."

A PCS of the Bill was distributed to members. Vice Chairman Clodfelter moved to adopt the PCS for discussion. The motion carried unanimously. A copy of the PCS relevant to the day's meeting may be found at http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H748v1.pdf

Noting that no action would be taken on the Bill at the day's meeting, Chairman Nesbitt recognized Vice Chairman Clodfelter to explain the bill. The Vice Chairman thanked Chairman Nesbitt and began speaking by recognizing Bill Sponsor Representative Ross and noting the highly technical nature of the Bill.

Senator Martin Nesbitt, Jr.
Chairman

Jessica Kozma Proctor
Committee Assistant

AGENDA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

SENATOR MARTIN L. NESBITT, CHAIRMAN
Senator Pete Brunstetter, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman
Senator Josh Stein, Vice Chairman

Tuesday, June 29, 2010
10 a.m.
Room 1027

1. Call Meeting to Order.

2. Recognize members, staff, and guests.

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
HB 1412	Courts-Martial Amendments.	Representative Martin Representative Glazier
HB 614	Absentee Voting Improvements.	Representative Martin Representative McLawhorn Representative Rapp Representative Glazier
HB 961	Gov't Ethics and Campaign Reform Act of 2010.	Representative Ross Representative Goodwin Representative Stam Representative Glazier
HB 666	Clarify Status of DWI Treatment Courts.	Representative Farmer-Butterfield Representative Alexander
HB 726	Clarify Expunctions.	Representative Ross Representative Goodwin Representative Moore
SB 1243	DV Cases/Review Criminal Record	Senator Graham

Adjournment.

HOUSE BILL 1412
Committee Substitute Favorable 5/6/09

Short Title: Courts-Martial Amendments. (Public)

Sponsors:

Referred to:

April 13, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE STATUTES RELATING TO NATIONAL GUARD COURTS-MARTIAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 127A-47 reads as rewritten:

"**§ 127A-47. Courts-martial for national guard.**

Courts-martial for organizations of the national guard not in the service of the United States shall be of three kinds, namely, general courts-martial, special courts-martial, and summary courts-martial. They shall be constituted, have cognizance of the same subjects, and possess like powers, ~~except as to punishments,~~ as similar courts provided for by the ~~law and regulations governing the armed forces of the United States, and the~~Uniform Code of Military Justice and Manual for Courts-Martial, United States, as shall be currently in use, except that no court shall have the power to impose confinement as part of a sentence. The proceedings of courts-martial of the national guard shall follow the forms and modes of procedure prescribed for such similar courts."

SECTION 2. G.S. 127A-48 reads as rewritten:

"**§ 127A-48. General courts-martial.**

General courts-martial of the national guard not in the service of the United States may be convened by orders of the Governor of the State, and such courts shall have the power to impose ~~fines not exceeding two hundred dollars ($200.00); sentence to forfeiture of pay and allowances; to a reprimand; to dismissal or dishonorable discharge from the service; to reduction of enlisted personnel to the ranks; or any two or more of such punishments may be combined in the sentences imposed by such courts.~~punishments in like manner and to the extent prescribed by the Uniform Code of Military Justice and Manual for Courts-Martial, United States, as shall be in use by the armed forces of the United States at the time of the offense, except that no court shall have the authority to impose confinement as part of a sentence."

SECTION 3. G.S. 127A-49 reads as rewritten:

"**§ 127A-49. Special courts-martial; appointments, power and authority.**

In the national guard, not in the service of the United States, special courts-martial may be appointed by any of the following:

(1) Any person who may convene a general court-martial.

(2) The Adjutant General of North Carolina.

~~(1)~~(3) The commander of a brigade, regiment, comparable or higher command of the North Carolina army national ~~guard;~~guard, provided that such commander is a general officer.

~~(2)~~(4) The commander of a wing, group, separate squadron, comparable or higher command of the North Carolina air national ~~guard;~~guard, provided that such commander is a general officer.

~~(3)~~(5) The commander or officer in charge of any North Carolina national guard command when empowered by the Governor or the Adjutant General of North ~~Carolina.~~Carolina, provided that such commander or officer is a general officer.

Except as to commissioned officers, such courts-martial shall have the power and authority to try any person subject to military law for any crimes or offenses within the jurisdiction of a general military court. Such courts-martial shall have the ~~same powers of punishment as general courts-martial except that fines imposed by such courts-martial shall not exceed one hundred dollars ($100.00), and such courts-martial shall not have the power of dismissal from the national guard.~~power to impose punishments in like manner and to the extent prescribed by the Uniform Code of Military Justice and Manual for Courts-Martial, United States, as shall be in use by the armed forces of the United States at the time of the offense, except that no court shall have the authority to impose confinement as part of a sentence."

SECTION 4. G.S. 127A-50 reads as rewritten:

"**§ 127A-50. Summary courts-martial.**

~~In the national guard, not in the service of the United States, summary courts-martial may be appointed by the commander of any company, battery, detachment, squadron, or any other federally recognized unit, either army or air. Such court shall consist of one officer, who shall have the power to administer oaths and try enlisted personnel of each respective command for breaches of discipline and violations of laws governing such organizations. Such courts shall also have the power to impose fines not exceeding twenty five dollars ($25.00) for any single offense, may sentence to forfeiture of pay and allowances, or may sentence enlisted personnel to reduction in rank; but in the case of noncommissioned officers above the fourth enlisted grade, may not adjudge reduction except to the next inferior grade. There shall be no right to demand trial by special court-martial.~~

In the national guard, not in the service of the United States, summary courts-martial may be appointed by any of the following:

(1) Any person who may convene a general or special court-martial.

(2) The commander of a battalion, comparable or higher command of the North Carolina army national guard, provided that such commander is an officer of the grade of major or above.

(3) The commander of a detached squadron, comparable or higher command of the North Carolina air national guard, provided that such commander is an officer of the grade of major or above.

Such court shall consist of one officer who shall have the power to administer oaths and try enlisted personnel of each respective command for breaches of discipline and violations of laws governing such organizations. Such courts shall also have the power to impose punishments in like manner and to the extent prescribed by the Uniform Code of Military Justice and Manual for Courts-Martial, United States, as shall be in use by the armed forces of the United States at the time of the offense, except that no court shall have the authority to impose confinement as part of a sentence. There shall be no right to demand trial by court-martial."

SECTION 5. G.S. 127A-50.1 reads as rewritten:

"**§ 127A-50.1. Military judges.**

The Adjutant General shall appoint military judges to preside over courts-martial of the National Guard not in federal service. Minimum requirements for appointment as a military judge ~~shall be:~~are:

(1) ~~Licensed to practice law in this State or certified~~Certification as a military judge by the Judge Advocate General of the Army, Air Force, ~~Navy, or Marines;~~Navy, Marines, or Coast Guard.

(2) Designation as a judge advocate by The Judge Advocate General of the Army, Navy, ~~Air Force, or Marines; and~~Air Force, Marines, or Coast Guard.

(3) Membership in the North Carolina National Guard, the National Guard of another state, or the active or reserve components of any of the military services."

SECTION 6. G.S. 127A-51 reads as rewritten:

"**§ 127A-51. Nonjudicial punishment.**

Any commander of the national guard, not in the service of the United States, may, in addition to or in lieu of admonition or reprimand, impose nonjudicial punishment in like manner and to the extent prescribed by Article 15 of the Uniform Code of Military ~~Justice,~~Justice and Manual for Courts-Martial, United States, as shall be currently in use by the armed forces of the United States except that there shall be no right to demand trial by ~~special~~ court-martial."

SECTION 7. G.S. 127A-52 reads as rewritten:

"**§ 127A-52. Jurisdiction of courts-martial.**

The jurisdiction of courts-martial of the national guard, not in the service of the United States, ~~except as to punishments,~~ shall be as prescribed by the Manual for Courts-Martial, United States, as shall be currently in use by the armed forces of the United States. Such courts-martial shall have jurisdiction to try accused persons for offenses committed while serving without the State and while going to and returning from such service without the State in like manner and to the same extent as while serving within the State."

SECTION 8. G.S. 127A-53 reads as rewritten:

"**§ 127A-53. Manual for Courts-Martial.**

Trials and proceedings by all courts and boards shall be in accordance with the ~~plans and procedures laid down in the~~ Manual for Courts-Martial, United States, as shall be currently in use by the armed forces of the United States, except as modified by this Chapter."

SECTION 9. G.S. 127A-54 is repealed.

SECTION 10. G.S. 127A-55 reads as rewritten:

"**§ 127A-55. Forms for courts-martial procedure.**

In the national guard, not in the service of the United States, forms for courts-martial procedure shall be substantially as those set forth in the Appendices, Manual for Courts-Martial, United States, as shall be currently in use by the armed forces of the United ~~States.~~States, with any modifications required by this Chapter."

SECTION 11. G.S. 127A-56 reads as rewritten:

"**§ 127A-56. Powers of courts-martial.**

In the national guard, not in the service of the United States, ~~presidents of courts-martial and summary court officers~~a military judge shall have power to issue warrants to arrest an accused ~~persons~~ person and to bring ~~them~~ the person before ~~the~~ a court for trial whenever such ~~persons shall have~~person has disobeyed an order in writing from the convening authority to appear before such court, a copy of the charge or charges having been delivered to the accused with such order, ~~and to issue commitments in carrying out sentences of confinement,~~ and to issue subpoenas and subpoenas duces tecum, and to enforce by attachment attendance of witnesses and the production of books, papers, records and other articles subject to a subpoena duces tecum, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts. He shall also have power to punish for contempt occurring in the presence of the court.

In addition to the power to issue warrants set forth in the first paragraph of this section, the arrest and confinement of persons subject to this ~~Chapter~~ section may be accomplished by the

means and under the procedures set forth in Articles 9 and 10 of the Uniform Code of Military Justice, Manual for Courts-Martial, United States, as shall be currently in use by the armed forces of the United States."

SECTION 12. G.S. 127A-57 reads as rewritten:

"**§ 127A-57. Execution of processes and sentences.**

All warrants and other processes authorized by this Chapter and sentences of any of the military courts of this State shall be executed by any sheriff, deputy sheriff, or ~~police officer~~State or local law enforcement officer into whose hands the same may be placed for service or execution, and such officer shall make return thereof to the officer issuing or imposing the same. Such service or execution of process or sentence shall be made by such officer without tender or advancement of fee therefor; but all costs in such cases shall be paid from funds appropriated ~~for military purposes.~~to the Department of Crime Control and Public Safety. ~~The actual necessary expenses of conveying a prisoner from one county in the State to another, when the same is authorized and directed by the Adjutant General of the State, shall be paid from the military funds of the State upon a warrant approved by the Adjutant General.~~"

SECTION 13. G.S. 127A-58 is repealed.

SECTION 14. G.S. 127A-59 reads as rewritten:

"**§ 127A-59. ~~Commitments.~~Sentences.**

When any sentence ~~to fine or imprisonment~~ shall be imposed by any military court of this State, it shall be the duty of the ~~president of said court, or summary court officer,~~military judge, upon the approval of the findings and sentence of such court, to make out and sign a certificate entitling the case, giving the name of the accused, the date and place of trial, the date of approval of sentence, ~~the amount of fine or manner, place, and duration of confinement, and~~and the terms of the sentence. If the court-martial was tried without a military judge, then any military judge may make out and sign the certificate after reviewing the approved findings and the sentence for compliance with this Chapter. The trial counsel shall deliver such certificate to the ~~sheriff, or deputy sheriff, or police officer~~clerk of court for the superior court of the county wherein the sentence ~~is to be executed;~~was imposed, or the Clerk of the Superior Court for Wake County if the court-martial was held out of State, and it shall thereupon be the duty of ~~such officer~~the clerk to take such actions as are necessary to carry said sentence into execution in the manner prescribed by law ~~for the collection of fines or commitment to service of terms of imprisonment in criminal cases~~ as determined in the courts of this State. The Administrative Office of the Courts shall ensure that the State's criminal history records include pertinent information relating to a court-martial under this Chapter in a like manner as a comparable offense under the State's criminal laws would be recorded."

SECTION 15. G.S. 127A-60 reads as rewritten:

"**§ 127A-60. Sentence of ~~dismissal.~~dismissal or discharge.**

No sentence of dismissal from the service or ~~dishonorable discharge,~~discharge imposed by a national guard court-martial not in the service of the United States, shall be executed until approved by the Governor. Any officer convicted by a general court-martial and dismissed from the service shall be forever disqualified from holding a commission in the militia."

SECTION 16. G.S. 127A-147 reads as rewritten:

"**§ 127A-147. Orders, rules, regulations and Uniform Code of Military Justice applicable to militia when not in service of United States.**

The national guard, State defense militia and naval militia, when not in the service of the United States, shall ~~except as to punishments,~~ be governed by State law, the orders, rules and regulations of the Adjutant General, regulations promulgated by the secretary of the appropriate service of the armed forces of the United States, and the Uniform Code of Military Justice, as amended from time to time."

SECTION 17. G.S. 127A-153 reads as rewritten:

"**§ 127A-153. Protection of uniform.**

(a) The wearing of any military uniform of the United States government by members of the militia shall be pursuant to applicable regulations promulgated by the respective armed services of the United States and regulations of the Adjutant General of North Carolina not inconsistent with federal uniform regulations.

(b) The wearing of any military uniform of the North Carolina State government by members of the militia shall be pursuant to applicable regulations promulgated by the Adjutant General of North Carolina.

(c) Members of the militia who violate the regulations referred to in (a) and (b) above shall, upon conviction by a court-martial, be punished ~~by a fine not exceeding fifty dollars ($50.00) or by imprisonment not exceeding 30 days, or by both fine and imprisonment, for each offense.~~in like manner and to the extent prescribed by Article 134 of the Uniform Code of Military Justice and Manual for Courts-Martial, United States, as shall be in use by the armed forces of the United States at the time of the offense, except that no court shall have the authority to impose confinement as part of a sentence.

(d) Persons not subject to courts-martial who violate the regulations referred to in (a) and (b) above may be charged and tried in the State courts and upon conviction shall be punished as provided in (c) above."

SECTION 18. This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

HOUSE BILL 614
Committee Substitute Favorable 4/8/09
Committee Substitute #2 Favorable 5/6/09
Fourth Edition Engrossed 5/7/09

Short Title: Absentee Voting Improvements. (Public)

Sponsors:

Referred to:

March 17, 2009

A BILL TO BE ENTITLED

AN ACT TO MAKE IMPROVEMENTS TO THE ABSENTEE VOTING LAWS, ESPECIALLY TO IMPROVE THE ABILITY OF MILITARY AND OVERSEAS VOTERS TO CAST TIMELY BALLOTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-248 reads as rewritten:

"**§ 163-248. Register, ballots, container-return envelopes, and instruction sheets.**

(a) Register of Military Absentee Ballot Applications and Ballots Issued. – The State Board of Elections shall ~~furnish the chairman of the board of elections in each county of the State with a book to be called the~~ approve an official register of military absentee ballot applications and ballots issued in which shall be recorded whatever information and official action may be required by this Article. ~~In lieu of furnishing this register, the State Board of Elections may provide for a separate military section in the register furnished under the provisions of G.S. 163-228 which shall be used for the same purpose.~~ The State Board of Elections may provide for the register to be kept by electronic data processing equipment, and a copy or a supplement of new information shall be printed each business day.

The register of military absentee ballot applications and ballots ~~issued, whether contained in a separate book or maintained as a separate part of the register furnished under the provisions of G.S. 163-228,~~ issued shall constitute a public ~~record and shall be opened to the inspection of any registered voter of the county at any time.~~record.

(b) Absentee Ballot Form. – Persons entitled to vote by absentee ballot under the terms of this Article shall be furnished with regular official ballots; separate or distinctly marked absentee ballots shall not be used. The State Board of Elections and the county boards of elections shall have all necessary absentee ballots printed and in the hands of the proper election officials not later than 60 days before the statewide general election in even-numbered years and not later than 50 days before the primary or any other election. However, in the case of municipal elections, absentee ballots shall be made available no later than 30 days before an election.

(c) Container-Return Envelope. – The county board of elections shall print a sufficient number of envelopes in which persons casting military absentee ballots may transmit their marked ballots to the chairman of the county board of elections. The container-return envelopes shall be printed and available for use not later than 60 days before the statewide general election in even-numbered years and not later than 50 days before the primary or any other election. However, in the case of municipal elections, container-return envelopes shall be made

available no later than 30 days before an election. Each container-return envelope shall be printed in accordance with the following instructions:

(1) On one side shall be arranged identified spaces in which the chairman of the county board of elections may insert the name of the applicant, the number assigned his application, and the designation of the precinct in which ~~his ballots are to be voted.~~ the applicant is registered.

(2) On the other side shall be printed the return address of the chairman of the county board of elections and the following certificate:

"CERTIFICATE OF ABSENTEE VOTER

I, _____, do hereby certify that I am a resident and qualified voter in _____ precinct, _____ County, North Carolina, and that I am [check whichever of the following statements is correct]

[ ] Serving in the armed forces of the United States

[ ] The spouse of a member of the armed forces of the United States residing outside the county of my spouse's residence

[ ] A disabled war veteran in a United States government hospital

[ ] A civilian attached to and serving outside the United States with the armed forces of the United States

[ ] A member of the Peace Corps

[ ] A United States citizen currently outside the United States

I further certify that I am affiliated with the _____ Party. [To be completed only if applicant seeks to vote in the primary of the political party to which he belongs.]

I further certify that the following is my official address:

_____

[Unit (Co., Sq., Trp., Bn., etc.), Governmental Agency, or Office]

_____

[Military Base, Station, Camp, Fort, Ship, Airfield, etc.]

_____

[Street number, APO, or FPO number]

_____

[City, postal zone, State, and zip code]

_____

[E-mail address]

I further certify that I made application for absentee ballots and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instruction. I understand it is a felony to falsely sign this certificate.

Witness my hand in the presence of _____ [Insert ~~names~~ name and ~~addresses~~ address of ~~witnesses~~ witness] this _____ day of _____, _____.

_____

(Signature of voter)

Signature of witness ~~# 1~~ _____

Address of witness ~~# 1~~ _____

~~Signature of witness # 2~~ _____

~~Address of witness # 2~~ _____

Note: This certificate must be witnessed by ~~any two persons who are~~ a person who is 18 years of age or older, and must contain ~~their signatures and addresses.~~ the signature and address of the witness."

(d) Instruction Sheets. – The county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters covered by the provisions of this

Article are to prepare absentee ballots and return them to the chairman of the county board of elections. The instruction sheets shall be printed and available for use not later than ~~60 days before the primary or election~~ the date of ballot availability."

SECTION 2. G.S. 163-227.3(a) reads as rewritten:

"(a) A board of elections shall provide absentee ballots of the kinds needed 60 days prior to the statewide general election in even-numbered years and 50 days prior to the date on which ~~the~~ any other election shall be ~~conducted~~ conducted, unless 45 days is authorized by the State Board of Elections under G.S. 163-22(k) or there shall exist an appeal before the State Board or the courts not concluded, in which case the board shall provide the ballots as quickly as possible upon the conclusion of such an appeal. However, in the case of municipal elections, absentee ballots shall be made available no later than 30 days before an election. In every instance the board of elections shall exert every effort to provide absentee ballots, of the kinds needed by the date on which absentee voting is authorized to commence."

SECTION 3. G.S. 163-228 reads as rewritten:

"**§ 163-228. Register of absentee requests, applications, and ballots issued; a public record.**

The State Board of Elections shall approve an official register in which the county board of elections in each county of the State shall record the following information:

(1) Name of voter for whom application and ballots are being requested, and, if applicable, the name and address of the voter's near relative or verifiable legal guardian who requested the application and ballots for the voter.
(2) Number of assigned voter's application when issued.
(3) Precinct in which applicant is registered.
(4) Address to which ballots are to be mailed, or, if the voter voted pursuant to G.S. 163-227.2, a notation of that fact.
~~(5) Reason assigned for requesting absentee ballots.~~
(6) Date request for application for ballots is received by the county board of elections.
(7) The voter's party affiliation.
(8) The date the ballots were mailed or delivered to the voter.
(9) Whatever additional information and official action may be required by this Article.

The State Board of Elections may provide for the register to be kept by electronic data processing equipment, and a copy shall be printed out each business day or a supplement printed out each business day of new information.

The register of absentee requests, applications and ballots issued shall constitute a public record and shall be opened to the inspection of any registered voter of the county ~~at any time~~ within ~~50~~ 60 days before and 30 days after an election in which absentee ballots were authorized, or at any other time when good and sufficient reason may be assigned for its inspection."

SECTION 4. G.S. 163-229 reads as rewritten:

"**§ 163-229. Absentee ballots, applications on container-return envelopes, and instruction sheets.**

(a) Absentee Ballot Form. – In accordance with the provisions of G.S. 163-230.1, persons entitled to vote by absentee ballot shall be furnished with official ballots.

(b) Application on Container-Return Envelope. – In time for use not later than 60 days before a statewide general election in an even-numbered year, and not later than 50 days before a statewide primary, other general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the county board of elections. However, in the case of municipal elections, sufficient container-return envelopes shall be made available no later than

30 days before an election. Each container-return envelope shall have printed on it an application which shall be designed and prescribed by the State Board of Elections, the voter's certification of eligibility to vote the enclosed ballot and of having voted the enclosed ballot in accordance with this Article, a space for identification of the envelope with the voter, and a space for approval by the county board of elections. The envelope shall allow reporting of a change of name as provided by G.S. 163-82.16. The container-return envelope shall be printed in accordance with the instructions of the State Board of Elections.

(c) Instruction Sheets. – In time for use not later than 60 days before a statewide general election in an even-numbered year, and not later than 50 days before a statewide primary, other general or county bond election, the county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters are to prepare absentee ballots and return them to the county board of elections. However, in the case of municipal elections, instruction sheets shall be made available no later than 30 days before an election."

SECTION 5. G.S. 163-230.1(a2) reads as rewritten:

"(a2) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. – When the county board of elections receives a request for applications and absentee ballots, the board shall promptly issue and transmit them to the voter in accordance with the following instructions:

(1) On the top margin of each ballot the applicant is entitled to vote, the chair, a member, officer, or employee of the board of elections shall write or type the words "Absentee Ballot No. ____" or an abbreviation approved by the State Board of Elections and insert in the blank space the number assigned the applicant's application in the register of absentee requests, applications, and ballots issued. That person shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter. Alternatively, the board of elections may cause to be barcoded on the ballot the voter's application number, if that barcoding system is approved by the State Board of Elections.

(2) The chair, member, officer, or employee of the board of elections shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163-229(b), the absentee voter's name, the absentee voter's application number, and the designation of the precinct in which the voter is registered. If the ballot is barcoded under this section, the envelope may be barcoded rather than having the actual number appear. The person placing the ballots in the envelopes shall leave the container-return envelope holding the ballots unsealed.

(3) The chair, member, officer, or employee of the board of elections shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the voter at the post office address stated in the request, seal the envelope, and mail it at the expense of the county board of elections: Provided, that in case of a request received after 5:00 p.m. on the Tuesday before the election under the provisions of subsection (a1) of this section, in lieu of transmitting the ballots to the voter in person or by mail, the chair, member, officer, or employee of the board of elections may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative or verifiable legal guardian of the voter.

The county board of elections may receive written requests for applications ~~earlier than 50 days~~ at anytime prior to the election but shall not mail applications and ballots to the voter or issue applications and ballots in person earlier than 60 days prior to the statewide general election in an even-numbered year, or earlier than 50 days prior to ~~the~~ any other election, except as provided in G.S. 163-227.2. No election official shall issue applications for absentee ballots except in compliance with this Article."

SECTION 6. G.S. 163-231(a) reads as rewritten:

"(a) Procedure for Voting Absentee Ballots. – In the presence of ~~two other persons who are~~ a person who is at least 18 years of age, and who ~~are~~ is not disqualified by G.S. 163-226.3(a)(4) or G.S. 163-237(b1), the voter shall:

(1) Mark the voter's ballots, or cause them to be marked by ~~one of such persons~~ that person in the voter's presence according to the voter's instruction;

(2) Fold each ballot separately, or cause each of them to be folded in the voter's presence;

(3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in the voter's presence;

(4) Make the application printed on the container-return envelope according to the provisions of G.S. 163-229(b) and make the certificate printed on the container-return envelope according to the provisions of G.S. 163-229(b).

The ~~persons~~ person in whose presence the ballot is marked shall at all times respect the secrecy of the ballot and the privacy of the absentee voter, unless the voter requests ~~their~~ the person's assistance and ~~they are~~ the person is otherwise authorized by law to give assistance. The ~~persons~~ person in whose presence the ballot was marked shall sign the application and certificate as ~~witnesses,~~ a witness and shall indicate ~~their~~ that person's address. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the county board of elections which issued the ballots."

SECTION 7. G.S. 163-250 reads as rewritten:

"**§ 163-250. Voting absentee ballots and transmitting them to chairman of county board of elections.**

(a) Procedure for Voting Absentee Ballots. – In the presence of ~~two persons who are at~~ a person who is at least 18 years of age, the voter shall:

(1) Mark ~~his~~ the voter's ballots, or cause them to be marked by ~~one of such persons~~ that person in ~~his~~ the voter's presence according to ~~his~~ the voter's instructions.

(2) Fold each ballot separately, or cause each of them to be folded in ~~his~~ the voter's presence.

(3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in ~~his~~ the voter's presence.

(4) Make and subscribe the certificate printed on the container-return envelope according to the provisions of G.S. 163-248(c).

The ~~persons~~ person in whose presence the ballots were marked shall sign the certificate as ~~witnesses,~~ a witness and shall give ~~their addresses.~~ that person's address.

(b) Transmitting Executed Absentee Ballots to Chairman of County Board of Elections. – When executed and witnessed in accordance with the provisions of subsection (a) of this section, the sealed container-return envelope in which executed absentee ballots have been placed shall be mailed by the voter to the chairman of the county board of elections who issued them."

SECTION 8.(a) G.S. 163-231(b) reads as rewritten:

"(b) Transmitting Executed Absentee Ballots to County Board of Elections. – The sealed container-return envelope in which executed absentee ballots have been placed shall be

transmitted to the county board of elections who issued them as follows: All ballots issued under the provisions of Articles 20 and 21 of this Chapter shall be transmitted by mail or by commercial courier service, at the voter's expense, or delivered in person, or by the voter's near relative or verifiable legal guardian not later than 5:00 p.m. on the day before the statewide primary or general election or county bond election. If ~~such~~ ballots are received later than that hour, they shall not be accepted ~~for~~ unless federal law so ~~requires~~requires, or if (i) ballots issued under Article 20 of this Chapter are postmarked by the day of the statewide primary or general election or county bond election and are received by the county board of elections not later than three days after the election by 5:00 p.m. or (ii) ballots issued under Article 21 of this Chapter are received by the county board of elections not later than three days after the election by 5:00 p.m. Ballots issued under Article 20 of this Chapter not postmarked by the day of the election shall not be accepted by the county board of elections."

SECTION 8.(b) Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-232.1. Certified list of executed absentee ballots received on or after election day; publication of list.**

(a) The county board of elections shall prepare, or cause to be prepared, a list in at least triplicate, of all absentee ballots issued under Article 20 of this Chapter returned to the county board of elections to be counted, which have been approved by the county board of elections, have not been included on the certified list prepared pursuant to G.S. 163-232, and which have been postmarked by the day of the statewide primary or general election or county bond election and received by the county board of elections not later than three days after the election by 5:00 p.m. The list shall be supplemented with new information each business day following the day of the election until the deadline for receipt of such absentee ballots. At the end of the list, the chairman shall execute the following certificate under oath:

"State of North Carolina

County of _____

I, _____, chairman of the _____ County Board of Elections, do hereby certify that the foregoing is a list of all executed absentee ballots to be voted in the election to be conducted on the _____ day of _____, _____, which have been approved by the county board of elections and which have been postmarked by the day of the statewide primary or general election or county bond election and received by the county board of elections not later than three days after the election by 5:00 p.m. I certify that the chairman, member, officer, or employee of the board of elections has not delivered ballots for absentee voting to any person other than the voter, by mail or by commercial courier service or in person, except as provided by law, and have not mailed or delivered ballots when the request for the ballot was received after the deadline provided by law.

This the _____ day of _____, _____

_____

(Signature of chairman of county board of elections)

Sworn to and subscribed before me this _____ day of _____, _____.

Witness my hand and official seal.

_____

(Signature of officer administering oath)

_____

(Title of officer)"

(b) The county board of elections shall prepare, or cause to be prepared, a list in at least triplicate, of all military absentee ballots issued under Article 21 of this Chapter and returned to the county board of elections to be counted, which have been approved by the county board of

elections, have not been included on the certified list prepared pursuant to G.S. 163-232, and which have been received by the county board of elections not later than three days after the election by 5:00 p.m. The list shall be supplemented with new information each business day following the day of the election until the deadline for receipt of such absentee ballots. At the end of the list, the chairman shall execute the following certificate under oath:

"State of North Carolina

County of _____

I, _____, chairman of the _____ County Board of Elections, do hereby certify that the foregoing is a list of all executed military absentee ballots to be voted in the election to be conducted on the _____ day of _____, _____, which have been approved by the county board of elections, and which have been postmarked by the day of the statewide primary or general election or county bond election and received by the county board of elections not later than three days after the election by 5:00 p.m. I further certify that I have issued ballots to no other persons than those listed herein and further that I have not delivered military absentee ballots to persons other than those listed herein; that this list constitutes the only precinct registration of military absentee voters whose names have not heretofore been entered on the regular registration of the appropriate precinct.

This the _____ day of _____, _____

_____

(Signature of chairman of county board of elections)

Sworn to and subscribed before me this _____ day of _____, _____.

Witness my hand and official seal.

_____

(Signature of officer administering oath)

_____

(Title of officer)"

(c) The board shall post one copy of the most current version of each list in the board office in a conspicuous location for public inspection and shall retain one copy until all challenges of absentee ballots have been heard by the county board of elections. The county board of elections shall cause one copy of each of the final lists of executed absentee ballots required under subsection (a) and subsection (b) to be deposited as "first-class" mail to the State Board of Elections no later than 10:00 a.m. of the next business day following the deadline for receipt of such absentee ballots. Challenges shall be made to absentee ballots as provided in G.S. 163-89. In addition the county board of elections shall, upon request, provide a copy of each of the lists to the chairman of each political party, recognized under the provisions of G.S. 163-96, represented in the county.

(d) All lists required by this section shall be retained by the county board of elections for a period of 22 months after which they may then be destroyed."

SECTION 8.(c) G.S. 163-89(a) reads as rewritten:

"(a) Time for Challenge. – The absentee ballot of any voter may be challenged on the day of any statewide primary or general election or county bond election beginning no earlier than noon and ending no later than 5:00 P.M., or by the chief judge at the time of closing of the polls as provided in G.S. 163-232 and G.S. 163-251(b). The absentee ballot of any voter received by the county board of elections pursuant to G.S. 163-231(b)(i) or (ii) may be challenged no earlier than noon on the day following the election and no later than 5:00 p.m. on the next business day following the deadline for receipt of such absentee ballots."

SECTION 8.(d) G.S. 163-234 reads as rewritten:

"**§ 163-234. Counting absentee ballots by county board of elections.**

All absentee ballots returned to the county board of elections in the container-return envelopes shall be retained by the board to be counted by the county board of elections as herein provided.

(1) Only those absentee ballots returned to the county board of elections no later than 5:00 p.m. on the day before election day in a properly executed container-return envelope or absentee ballots received pursuant to G.S. 163-231(b)(i) or (ii) shall be counted, except to the extent federal law requires otherwise.

(2) The county board of elections shall meet at 5:00 p.m. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 p.m. on election ~~day.~~ and absentee ballots received pursuant to G.S. 163-231(b)(i) or (ii). Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided the elector shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 p.m. and 5:00 p.m. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. Such resolution may also provide for an additional meeting following the day of the election and prior to the day of canvass to count absentee ballots received pursuant to G.S. 163-231(b)(i) or (ii) as provided in subdivision (10) of this section. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ballots. Nothing in this section shall prohibit a county board of elections from taking preparatory steps for the count earlier than the times specified in this section, as long as the preparatory steps do not reveal to any individual not engaged in the actual count election results before the times specified in this subdivision for the count to begin. By way of illustration and not limitation, a preparatory step for the count would be the entry of tally cards from direct record electronic voting units into a computer for processing. The board shall not announce the result of the count before 7:30 p.m.

(2a) Notwithstanding the provisions of subdivision (2) of this section, a county board of elections may, at each meeting at which it approves absentee ballot applications pursuant to G.S. 163-230.1(c) and (c1), remove those ballots from their envelopes and have them read by an optical scanning machine, without printing the totals on the scanner. The board shall complete the counting of these ballots at the times provided in subdivision (2) of this section. The State Board of Elections shall provide instructions to county boards of elections for executing this procedure, and the instructions shall be designed to ensure the accuracy of the count, the participation of board members of both parties, and the secrecy of the results before election day.

This subdivision applies only in counties that use optical scan devices to count absentee ballots.

(3) The counting of absentee ballots shall not commence until a majority and at least one board member of each political party represented on the board is present and that fact is publicly declared and entered in the official minutes of the county board.

(4) The county board of elections may employ such assistants as deemed necessary to count the absentee ballots, but each board member present shall be responsible for and observe and supervise the opening and tallying of the ballots.

(5) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated "Pollbook of Absentee Voters" the name of the absentee voter, or if the pollbook is computer-generated, the board shall check off the name. Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot. The "Pollbook of Absentee Voters" shall also contain the names of all persons who voted under G.S. 163-227.2, but those names may be printed by computer for inclusion in the pollbook.

After all ballots have been placed in the boxes, the counting process shall begin.

If one-stop ballots under G.S. 163-227.2 are counted electronically, that count shall commence at the time the polls close. If one-stop ballots are paper ballots counted manually, that count shall commence at the same time as other absentee ballots are counted.

If a challenge transmitted to the board on canvass day by a chief judge is sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163-89(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The county board of elections shall be responsible for the safekeeping of the pollbook of absentee voters.

(6) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board of Elections. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board of Elections. The county board of elections may have a separate count on the abstract for one-stop absentee ballots under G.S. 163-227.2.

(7) One copy of the absentee abstract shall be retained by the county board of elections and the totals appearing thereon shall be added to the final totals of all votes cast in the county for each office as determined on the official canvass.

(8) In the event a political party does not have a member of the county board of elections present at the meeting to count absentee ballots due to illness or other cause of the member, the counting shall not commence until the county party chairman of said absent member, or a member of the party's county executive committee, is in attendance. Such person shall act as an official witness to the counting and shall sign the absentee ballot abstract as an "observer."

(9) The county board of elections shall retain all container-return envelopes and absentee ballots, in a safe place, for at least four months, and longer if any contest is pending concerning the validity of any ballot.

(10) The county board of elections shall meet after election day and prior to the date of canvass to determine where the container-return envelope for absentee ballots received pursuant to G.S. 163-231(b)(i) or (ii) has been properly executed. The county board of elections shall comply with the requirements of G.S. 163-230.1 for approval of applications. Any absentee ballots received pursuant to G.S. 163-231(b)(i) or (ii) shall be counted by the county board of elections on the day of canvass. The county board of elections is also authorized to meet following the day of the election and prior to the day of canvass to count absentee ballots received pursuant to G.S. 163-231(b)(i) or (ii) upon the adoption of a resolution pursuant to subdivision (2) of this section. The county board of elections shall comply with all other requirements of this section for the counting of such absentee ballots."

SECTION 9. Article 21 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-258. Emergency powers.**

If an international, national, or local emergency or other situation arises that makes substantial compliance with this Article or the Uniformed and Overseas Citizens Absentee Voting Act impossible or unreasonable, the State Board of Elections may prescribe, by emergency rule, such special procedures or requirements as may be necessary to facilitate absentee voting by those absent uniformed services voters or overseas voters directly affected who are eligible to vote in this State. The rule shall become effective when filed with the Codifier of Rules."

SECTION 9.1. G.S. 163-22(k) reads as rewritten:

"(k) Notwithstanding the provisions contained in Article 20 or Article 21 of Chapter 163 the State Board of Elections shall be authorized, by resolution adopted prior to the printing of the primary ballots, to reduce the time by which absentee ballots are required to be printed and distributed for the primary election from 50 days to 45 days. This authority shall not be authorized for absentee ballots to be voted in the ~~general election.~~general election, except if the law requires ballots to be available for mailing 60 days before the general election, and they are not ready by that date, the State Board of Elections shall allow the counties to mail them out as soon as they are available."

SECTION 10. This act becomes effective January 1, 2010, and applies with respect to elections held on or after that date.

HOUSE BILL 961

Committee Substitute Favorable 4/15/09
Committee Substitute #2 Favorable 5/12/09
Senate Judiciary I Committee Substitute Adopted 6/22/10
Senate Finance Committee Substitute Adopted 6/22/10

Short Title: Gov't Ethics and Campaign Reform Act of 2010. (Public)

Sponsors:

Referred to:

April 1, 2009

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN PUBLIC CONFIDENCE IN THE ELECTION PROCESS FOR COUNCIL OF STATE OFFICES THAT REGULATE INDIVIDUALS AND BUSINESSES IN THIS STATE; TO PROVIDE LIMITS ON THE TRADING OF INFLUENCE OR POSITION FOR GAIN; TO INCREASE THE PUNISHMENT FOR MAKING CAMPAIGN CONTRIBUTIONS IN THE NAME OF ANOTHER; TO INCREASE ACCESSIBILITY TO INFORMATION RELATED TO CANDIDATE CAMPAIGN COMMITTEES; TO STRENGTHEN PUBLIC CONFIDENCE IN GOVERNMENT BY INCREASING THE REVOLVING DOOR PERIOD AND APPLICABILITY; TO STRENGTHEN TRANSPARENCY OF GOVERNMENT THROUGH ADDITIONAL DISCLOSURES BY PUBLIC SERVANTS; TO INCREASE ACCOUNTABILITY OF PUBLIC SERVANTS, APPOINTEES OF THE GOVERNOR, AND STATE EMPLOYEES BY PERMITTING THE GOVERNOR TO ADOPT MINIMUM STANDARDS OF ETHICAL CONDUCT; TO STRENGTHEN TRANSPARENCY OF GOVERNMENT THROUGH INCREASING ACCESSIBILITY TO PUBLIC RECORDS; TO MAKE TECHNICAL CHANGES; AND TO MAKE OTHER CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 22J of Chapter 163 of the General Statutes reads as rewritten:

"Article 22J.

"The Voter-Owned Elections Act.

"§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.

The purpose of this Article is to ensure the vitality and fairness of democratic elections for elected offices that implement and provide oversight on the regulation or investigation of individuals, businesses, or government in North Carolina to the end that any eligible citizen of this State can realistically choose to seek and run for that public office. It is also the purpose of this Article to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption within regulatory or investigatory offices overseen by elected officials is minimized and that the equal and meaningful participation of all citizens in the democratic process is ensured. Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund as an alternative source of campaign financing for candidates

who obtain a sufficient number of qualifying contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for the Council of State offices of Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in elections to be held in 2008 and ~~thereafter.~~ thereafter; to candidates for the Council of State offices of Secretary of State and Treasurer, and to candidates for the offices of Commissioner of Agriculture and Commissioner of Labor, in elections to be held in 2012 and thereafter; and to candidates for the Council of State office of Attorney General in elections to be held in 2016 and thereafter.

"**§ 163-278.96. Definitions.**

The following definitions apply in this Article:

(1) Board. – The State Board of Elections.

(2) Campaign-related expenditure. – An expenditure that benefits the candidate's current campaign in accordance with guidelines established by the Board.

(3) Candidate. – An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a "candidate campaign committee" as defined in G.S. 163-278.38Z(3).

(4) Certified candidate. – A candidate for office who chooses to receive campaign funds from the Fund and who is certified under G.S. 163-278.98(c). A write-in candidate authorized under G.S. 163-123 is not eligible to become a certified candidate.

(5) Contested primary and contested general election. – An election in which there are more candidates than the number to be elected.

(6) Contribution. – Defined in G.S. 163-278.6. A distribution from the Fund pursuant to this Article is not a "contribution" and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or G.S. 163-278.19. Instead of being subject to G.S. 163-278.16B, distributions are subject to the guidelines issued by the Board pursuant to G.S. 163-278.98(e)(5).

(6a) Electioneering communication. – As defined in G.S. 163-278.80 and G.S. 163-278.90, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day.

(7) Expenditure. – Defined in G.S. 163-278.6.

(8) Fund. – The North Carolina Voter-Owned Elections Fund established in G.S. 163-278.97.

(9) Independent expenditure. – Defined in G.S. 163-278.6.

(10) Maximum qualifying contributions. – If the candidate has ~~an uncontested~~ no primary, an amount equal to ~~100~~one hundred dollars ($100.00) times the ~~filing fee~~ minimum number of registered voters required to make a qualifying contribution under G.S. 163-278.98(b) for the office sought. If the candidate has a contested primary, ~~200~~ two hundred dollars ($200.00) times the ~~filing fee~~ minimum number of registered voters required to make a qualifying contribution under G.S. 163-278.98(b) for the office sought.

(11) Nonparticipating candidate. – A candidate for office who is not seeking to be certified under G.S. 163-278.98(c).

(12) Office. – The Council of State offices of Auditor, Secretary of State, Superintendent of Public Instruction, Treasurer, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

(13) Participating candidate. – A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.98(a).

(14) Political committee. – Defined in G.S. 163-278.6.

(15) Qualifying contribution. – A contribution of not less than ten dollars ($10.00) and not more than two hundred dollars ($200.00) in the form ~~of a check or money order~~ prescribed for noncash monetary contributions in G.S. 163-278.14(b) to the candidate that meets both of the following conditions:

a. Made by ~~any~~ an individual who is a registered voter in this ~~State.~~State at the time of the submittal of the report specified in G.S. 163-278.98(c).

b. Made only during the qualifying period and obtained with the approval of the candidate or candidate's committee.

(16) Qualifying period. – The period beginning September 1 in the year before the election and ending on the day of the primary.

(17) Trigger for matching funds. – The dollar amount at which matching funds are released under G.S. 163-278.99B for certified candidates. In the case of a contested primary, the trigger equals the maximum qualifying contributions for the candidate. In the case of a contested general election, the trigger equals the base level of funding available under G.S. 163-278.99(b)(4).

"§ 163-278.97. Voter-Owned Elections Fund established; sources of funding.

(a) Establishment of Fund. – The North Carolina Voter-Owned Elections Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

(b) Sources of Funding. – Money received from all the following sources must be deposited in the Fund:

(1) Unspent Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.

(2) Money ordered returned to the Fund in accordance with G.S. 163-278.99D.

(3) Money paid to the Fund equal to excess contributions as provided in G.S. 163-278.98(e)(1).

(4) Voluntary donations made directly to the Fund.

(5) Appropriations from the General Fund.

(6) Money collected pursuant to G.S. 55A-1-22, 57C-1-22, 58-33-125, 78A-37, 95-110.5(20), 95-69.11(11), 106-22, and 147-69.2(e).

(c) Evaluation and Determination of Fund Amount. – By January 1, 2011, and every four years thereafter, the Board, in conjunction with the Advisory Council established under G.S. 163-278.68(b), shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund during the next election cycle ~~and make recommendations about the feasibility of expanding its provisions to include other candidates for State office~~ based on the experience of this Article and the experience of similar programs in North Carolina and other states. The Board shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates but is not reached by regulation.

"§ 163-278.98. Requirements for participation.

(a) Declaration of Intent to Participate. – Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the

program established by this Article as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, campaign-related expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (e) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. – In order to be certified, participating candidates must obtain qualifying contributions from at least ~~750~~ 900 registered voters in this ~~State.~~ State, and from an additional 100 registered voters in this State for each one hundred thousand dollars ($100,000) that the grant amount for the office under G.S. 163-278.99(b)(4) exceeds three hundred thousand dollars ($300,000). Multiple contributions from the same individual to the same candidate shall not count as more than one qualifying contribution.

The qualifying contributions shall be equal to at least ~~25~~ twenty dollars ($20.00) times the ~~amount of the filing fee for the office.~~ minimum number of qualifying contributions but shall not exceed the maximum qualifying contributions defined in G.S. 163-278.96(10). No payment, gift, ~~or~~ anything of ~~value~~ value, or the opportunity to win anything of value shall be given in exchange for a qualifying contribution.

(c) Certification of Candidates. – Upon receipt of a submittal of the record of qualifying contributions by a participating candidate, the Board shall determine whether or not the candidate has:

(1) Filed a completed declaration of intent to participate in this Article.

(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.

(3) Filed a notice of candidacy with the State Board of Elections as a candidate for the office.

(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of qualifying contributions.

(d) Final Report for Qualifying Contributions. – No later than five business days after the end of the qualifying period, all participating candidates shall submit a report to the Board of all previously unreported qualifying contributions, in accordance with procedures developed by the Board. Within seven business days after submittal of the final report, the Board shall determine, through a random audit or other means it adopts, whether the contributions abide by the definition of qualifying contributions, whether they must be returned to the donor, and whether they exceed the maximum amount of qualifying contributions.

(e) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. – The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning August 1 of the year before the election and before filing a declaration of intent, a candidate shall limit campaign-related expenditures to twenty thousand dollars ($20,000) and shall not accept more than twenty thousand dollars ($20,000) from sources and in amounts permitted by Article 22A of this Chapter. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Fund. However, the acceptance of contributions in excess of that twenty thousand dollar ($20,000) limit does not render the candidate ineligible if the

candidate pays to the Board an amount equal to the contributions accepted by the candidate in excess of that limit. The Board shall deposit all such payments into the Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, in-kind party contributions as permitted in subdivision (4) of this subsection, and personal and family contributions permitted under subdivision (4a) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. Except for personal and family contributions permitted under subdivision (4a) of this subsection, multiple contributions from the same contributor to the same candidate shall not exceed two hundred dollars ($200.00). In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this subsection and possible matching funds received pursuant to G.S. 163-278.99B. If the candidate has any remaining money that was raised as contributions before August 1 of the year before the election, the candidate may not expend that money after filing the declaration of intent, except for purposes permitted under subdivision (2), (3), (6), (7), or (8) of G.S. 163-278.16B(a).

(3) After the qualifying period and through the date of the general election, the candidate shall cease campaign-related fund-raising activities and shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.99(b) plus any funds remaining from the qualifying period and possible matching funds.

(4) In addition to the amounts above, a candidate may accept in-kind contributions from political party executive committees, up to an aggregate value of thirty thousand dollars ($30,000) for the election cycle.

(4a) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. The candidate may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister. Up to two hundred dollars ($200.00) of a contribution from the candidate's family member may be treated as a qualifying contribution if it meets the requirements of G.S. 163-278.96(15)a. and b.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures.

(6) Except as provided in subdivision (1) of this subsection, any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.99D. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election or at the time the individual ceases to be a certified candidate, whichever occurs first. For

accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(f) Revocation. – A candidate may revoke, in writing to the Board, a decision to participate in the Fund at any time. After a revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund.

"§ 163-278.99. Distribution from the Fund.

(a) Timing of Fund Distribution. – The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section as follows:

(1) One-third of the amount within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(2) The remainder of the amount on August 1 before the general election.

(b) Amount of Fund Distribution. – ~~By August 1, 2011, and no less frequently than every four years thereafter,~~ No later than August 1 of the second year before an election, the Board shall determine the amount of ~~funds, rounded to the nearest one hundred dollars ($100.00),~~ funds to be distributed to certified candidates as follows:

(1) ~~Uncontested primaries.~~ No primary. – No funds shall be distributed.

(2) Contested primaries. – No funds shall be distributed except as provided in G.S. 163-278.99B.

(3) Uncontested general elections. – No funds shall be distributed.

(4) Contested general elections. – The amount of funds to be distributed to a candidate is the average amount of campaign-related expenditures made in the general election by all candidates who won the immediately preceding three general elections for that office, rounded to the nearest one thousand dollars ($1,000), but not less than three hundred thousand dollars ($300,000). For purposes of this subsection, "campaign-related expenditures" does not include loan repayments and contributions to a candidate, political committee, or political party. For purposes of this subsection, expenditures are made in the general election if they are required to be reported on the third and fourth quarterly reports.

(c) Method of Fund Distribution. – The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding, and the candidate may raise additional money in the same manner as a nonparticipating candidate for the same office up to the unfunded amount of the candidate's eligible funding.

"§ 163-278.99A. Reporting requirements.

(a) Reporting by Noncertified Candidates and Other Entities. – Any nonparticipating candidate with a certified opponent shall report total contributions received to the Board by facsimile machine or electronically within 24 hours after the total amount of contributions received exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163-278.96(17). Any entity making independent expenditures in support of or in opposition to a certified candidate, or in support of a candidate opposing a certified candidate, or paying for electioneering communications referring to one of those candidates, shall report the total funds received, spent, or obligated for those expenditures or payments to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent

expenditures or electioneering communications exceeds five thousand dollars ($5,000). After the initial 24-hour filing, the nonparticipating candidate or other reporting entity shall comply with an expedited reporting schedule. The schedule and forms for reports required by this subsection shall be supplied by the Board.

(b) Reporting by Participating and Certified Candidates. – Notwithstanding other provisions of law, participating and certified candidates shall report any money received and all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. Upon the filing of a final report for any losing primary election, special election, or general election, each candidate who has revenues from the Fund remaining unspent shall return those revenues to the Board. In developing these procedures, the Board shall utilize existing campaign reporting procedures wherever practicable.

(c) Timely Access to Reports. – The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information.

"**§ 163-278.99B. Matching funds.**

(a) When Matching Funds Become Available. – When any report or group of reports shows that "funds in opposition to a certified candidate or in support of an opponent to that candidate" as described in this section exceed the trigger for matching funds as defined in G.S. 163-278.96(17), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. "Funds in opposition to a certified candidate or in support of an opponent to that candidate" shall be equal to the sum of subdivisions (1) and (2) as follows:

(1) The greater of the following:

a. Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one nonparticipating opponent of a certified candidate. Where a certified candidate has more than one nonparticipating opponent, the measure shall be taken from the nonparticipating candidate showing the highest relevant dollar amount.

b. The funds distributed in accordance with G.S. 163-278.99(b) to a certified opponent of the certified candidate.

(2) The aggregate total of all expenditures and payments reported in accordance with G.S. 163-278.99A(a) of entities making independent expenditures or electioneering communications in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Matching Funds ~~in Contested Primary.~~ Before Date of Primary. – Total matching funds to a certified candidate ~~in a contested~~ before the date of the primary shall be limited to an amount equal to the maximum qualifying contributions for a candidate with a contested primary. Matching funds are available to a certified candidate with an opponent in the primary or to a certified candidate who is clearly referred to in expenditures reportable under G.S. 163-278.99A made in opposition to that candidate.

(c) Limit on Matching Funds in Contested General Election. – Total matching funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163-278.99(b)(4).

(d) Determinations by Board. – In the case of electioneering communications, the Board shall determine which candidate, if any, is entitled to receive matching funds as a result of the communication. The Board shall issue matching funds based on the communication only if it ascertains that the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. In making its determination, the Board shall not consider evidence external to the communication itself of the intent of the sponsor or the effect of the communication. The Board shall notify each candidate it determines is entitled

to receive matching funds based on those communications, the sponsor of those communications, and any candidate who is an opponent of the candidate it determines is entitled to the matching funds. The Board shall give the sponsor of the communication and any opposing candidate an adequate opportunity to rebut the determination of the Board. In considering the rebuttal, all candidates in the race and the sponsor shall be given adequate and equal opportunity to be heard. The Board shall adopt procedures for implementing this subsection, balancing in those procedures adequacy of opportunity to rebut and adequacy and equality of opportunity to be heard on the rebuttal with the need to expedite the decision on awarding matching funds. The Board shall distribute the matching funds, if any, at the conclusion of its process.

(e) Proportional Measuring of Multicandidate Communications. – In calculating the amount of matching funds a certified candidate is eligible to receive under this section, the Board shall include the proportion of expenditures, obligations, or payments for multicandidate communications that pertains to the candidate.

(f) No Matching Funds for Communications Supporting or Opposing All Candidates. – No matching funds are available under this section as a result of an expenditure that supports all candidates for the same office or opposes all candidates for the same office. No matching funds are available under this section as a result of an electioneering communication that the Board ascertains is susceptible of no reasonable interpretation other than as an appeal to vote for all candidates for the same office or to vote against all candidates for the same office.

"§ 163-278.99C. Unaffiliated and new-party candidates.

Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the same amounts and at the same time as specified in G.S. 163-278.99. For unaffiliated candidates and new-party candidates not certified to appear on the ballot by noon on the deadline set in G.S. 163-106(c) for candidate filing in the election year, the deadline for seeking certification to receive revenue from the Fund is noon on the first business day of July of the election year.

"§ 163-278.99D. Enforcement by the Board; civil penalty.

In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation or three times the amount of any financial transactions involved in the violation, whichever is greater. In addition to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the Board makes a determination that a violation of this Article has occurred, the Board shall calculate and assess the amount of the civil penalty and shall notify the entity that is assessed the civil penalty of the amount that has been assessed. The Board shall then proceed in the manner prescribed in G.S. 163-278.34. In determining whether or not a candidate is in violation of this Article, the Board may consider as a mitigating factor any circumstances out of the candidate's control.

"§ 163-278.99D.1. Enforcement and administration.

(a) Enforcement by the Board. – The Board, with the advice of the Advisory Council for the Public Campaign Fund established by G.S. 163-278.68, shall administer the provisions of this Article.

(b) Appeals. – The initial decision on an issue concerning qualification, certification, or distribution of funds under this Article shall be made by the Executive Director of the Board. The procedure for challenging that decision is as follows:

(1) An individual or entity aggrieved by a decision by the Executive Director of the Board may appeal to the full Board within three business days of the decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five business days after an appeal is properly made, and after due notice is given to the parties, the Board shall hold a hearing. The appellant has the burden of providing clear and convincing evidence to demonstrate that the decision of the Executive Director was improper. The Board shall rule on the appeal within three business days after the completion of the hearing.

(c) Board to Adopt Procedures and Issue Opinions. – The Board shall adopt procedures and issue opinions to ensure effective administration of this Article. Such procedures and opinions shall include, but not be limited to, procedures for obtaining qualifying contributions, certification of candidates, addressing circumstances involving special elections, vacancies, recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance with this Article. The Board shall adopt procedures for the distribution of matching money that further the purpose and avoid the subversion of G.S. 163-278.99B. For races involving special elections, recounts, vacancies, withdrawals, or replacement candidates, the Board shall establish procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues. Where applicable, the Board shall adopt the provisions of G.S. 163-278.64A. The Board shall fulfill each of these duties in consultation with the Advisory Council on the Public Campaign Fund.

(d) Report to the Public. – The Advisory Council for the Public Campaign Fund shall issue a report by March 1, 2013, and every two years thereafter that evaluates and makes recommendations about the implementation of this Article based on the experience of the Fund and the experience of similar programs in other states. The Advisory Council shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates receiving money from the Fund but that does not meet the definition of "independent expenditures."

"**§ 163-278.99E. Voter education.**

(a) Voter Guide. – The Board shall publish a Voter Guide that explains the functions of ~~office as defined in G.S. 163-278.96(12) and the laws concerning the election~~ all 10 offices of the Council of State, the purpose and function of the Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The State Board of Elections shall maintain a list of the addresses from which mailed Voter Guides are returned as undeliverable. That list shall be available for public inspection. The distribution shall occur no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the primary and no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the general election.

(b) Candidate Information. – The Voter Guide shall include information concerning all candidates for ~~office as defined in G.S. 163-278.96(12),~~ all 10 of the offices of the Council of State, as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

(1) Place of residence.
(2) Education.
(3) Occupation.
(4) Employer.
(5) Previous elective offices held.
(6) ~~Endorsements, limited to 50 words.~~ Endorsements. – Concerning endorsements, the Board shall send to the candidates instructions as follows: "In order to have an endorsement published, you must provide written

confirmation to the Board from the endorsing person or organization that you received that person's or organization's endorsement."

(7) Candidate ~~statement, limited to 150 words.~~ Statement. – Concerning that statement, the Board shall send to the candidates instructions as follows: "Your statement may include information such as your qualifications, your endorsements, why you would make a good elected official, what distinguishes you from your opponent(s), and any other information relevant to your candidacy. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language. The candidate shall have three days to resubmit the candidate statement if the Board rejects a portion of the statement."

The entire entry for a candidate shall be limited to 250 words.

(c) Disclaimer. – The Voter Guide shall contain the following statement: "Statements by candidates do not express or reflect the opinions of the State Board of Elections."

(d) Relationship to the Judicial Voter Guide. – ~~The Board may~~ Whenever possible, the Board shall publish the Voter Guide in conjunction with the Judicial Voter Guide described in G.S. 163-278.69."

SECTION 1.(b) G.S. 55A-1-22 reads as rewritten:

"**§ 55A-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	~~$60.00~~$65.00
(2)	Application for reserved name	$10.00
(3)	Notice of transfer of reserved name	$10.00
(4)	Application for registered name	$10.00
(5)	Application for renewal of registered name	$10.00
(6)	Corporation's statement of change of registered agent or registered office or both	$ 5.00
(7)	Agent's statement of change of registered office for each affected corporation	$ 5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	$ 5.00
(10)	Amendment of articles of incorporation	$25.00
(11)	Restated articles of incorporation without amendment of articles	$10.00
(12)	Restated articles of incorporation with amendment of articles	$25.00
(13)	Articles of merger	$25.00
(14)	Articles of dissolution	$15.00
(15)	Articles of revocation of dissolution	$10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Application for reinstatement following administrative dissolution	$100.00
(18)	Certificate of reinstatement	No fee
(19)	Certificate of judicial dissolution	No fee
(20)	Application for certificate of authority	$125.00
(21)	Application for amended certificate of authority	$25.00
(22)	Application for certificate of withdrawal	$10.00
(23)	Certificate of revocation of authority to conduct affairs	No fee
(24)	Corporation's Statement of Change of Principal Office	$ 5.00
(24a)	Designation of Principal Office Address	$ 5.00

(25)	Articles of correction	$10.00
(26)	Application for certificate of existence or authorization (paper)	$15.00
(26a)	Application for certificate of existence or authorization (electronic)	$10.00
(27)	Any other document required or permitted to be filed by this Chapter	$10.00
(28)	Repealed by Session Laws 2001-358, s. 7(c), effective January 1, 2002.	

(a1) Of the fee charged pursuant to subdivision (a)(1) of this section, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original.

(2) Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate."

SECTION 1.(c) G.S. 57C-1-22 reads as rewritten:

"**§ 57C-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	Articles of organization	~~$125.00~~$130.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(12a)	Articles of conversion (other than articles of conversion included as part of another document)	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	Cancellation of articles of dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(16a)	Application for reinstatement following administrative dissolution	100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	250.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee

(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization (paper)	15.00
(24a)	Application for certificate of existence or authorization (electronic)	10.00
(25)	Annual report	~~200.00~~205.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00
(27)	Repealed by Session Laws 2001-358, s. 8(c).	

(a1) Of the fee charged pursuant to subdivision (a)(1) of this section, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited liability company:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate."

SECTION 1.(d) G.S. 58-33-125(c) reads as rewritten:

"(c) Any person who is not licensed and who is required by law or administrative rule to secure a license shall, upon application for licensing, pay to the Commissioner a fee of ~~fifty dollars ($50.00).~~ fifty-five dollars ($55.00). If additional licensing for other kinds of insurance is requested, a fee of ~~fifty dollars ($50.00)~~ fifty-five dollars ($55.00) shall be paid to the Commissioner upon application for licensing for each additional kind of insurance. Of the fifty-five dollar ($55.00) fee charged, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes.

In addition to the fees prescribed by this subsection, any person applying for a supplemental license to sell Medicare supplement and long-term care insurance policies shall pay an additional fee of fifty dollars ($50.00) upon application for licensing for those kinds of insurance."

SECTION 1.(e) G.S. 78A-37(b) reads as rewritten:

"(b) Every applicant for initial or renewal registration shall pay a filing fee of ~~three hundred dollars ($300.00)~~ three hundred five dollars ($305.00) in the case of a dealer and ~~one hundred twenty-five dollars ($125.00)~~ one hundred thirty dollars ($130.00) in the case of a salesman. The Administrator may by rule reduce the registration fee proportionately when the registration will be in effect for less than a full year. Of a fee charged pursuant to this subsection, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(f) G.S. 95-110.5(20) reads as rewritten:

"(20) To establish fees not to exceed two hundred dollars ($200.00) for the inspection and issuance of certificates of operation for all devices and equipment subject to this Article upon installation or alteration, for each follow-up inspection, and for annual periodic inspections thereafter. Of the fee charged pursuant to this subdivision, an additional five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(g) G.S. 95-69.11(11) reads as rewritten:

"(11) To establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels that are in use. Of any fee charged pursuant to this subdivision, an additional five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(h) G.S. 106-22 is amended by adding a new subdivision to read:

"(18) Rental agreements. – For every rental agreement for real property where the Board or the Commissioner is the lessor, the Board or Commissioner shall charge an additional three percent (3%), which shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(i) G.S. 147-69.2 is amended by adding a new subsection to read:

"(e) There shall be charged a fee of two one-hundredths of a percent (.02%) on each fund held by the Treasurer that consists of nontax revenue, excluding funds holding monies for pensions and retirement, escheats, general fund, federal funds, and bond proceeds, to be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(j) For the period January 1, 2011, through December 31, 2012, two dollars and fifty cents ($2.50) of each three dollar ($3.00) allocation under G.S. 105-159.2 shall be transferred on a monthly basis to the North Carolina Voter-Owned Election Fund for distribution under Article 22J of Chapter 163 of the General Statutes in the 2012 election.

SECTION 1.(k) The State Board of Elections shall make the determination of available funds required by G.S. 163-278.99(b), as enacted by this section, on October 1, 2010, or within 30 days of receiving preclearance under section 5 of the Voting Rights Act of 1965, whichever date occurs first.

SECTION 1.(l) This section becomes effective October 1, 2010.

SECTION 2.(a) G.S. 163-278.96(12), as amended by Section 1 of this act, reads as rewritten:

"(12) Office. – The Council of State offices of Attorney General, Auditor, Secretary of State, Superintendent of Public Instruction, Treasurer, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance."

SECTION 2.(b) This section becomes effective July 1, 2015.

SECTION 3.(a) G.S. 126-14 reads as rewritten:

"**§ 126-14. Promise or threat to obtain political contribution or support.**

(a) It is unlawful for a State employee or a person appointed to State office, other than elective office or office on a board, commission, committee, or council whose function is advisory only, whether or not subject to the Personnel Act, to coerce:

(1) a State employee subject to the Personnel Act,
(2) a probationary State employee,
(3) a temporary State employee, or
(4) an applicant for a position subject to the Personnel Act

to support or contribute to a political candidate, political committee as defined in G.S. 163-278.6, or political party or to change the party designation of ~~his~~ the individual's voter registration by threatening that change in employment status or discipline or preferential personnel treatment will occur with regard to ~~a person~~ an individual listed in subdivisions (1) through (4).

(a1) It is unlawful for an individual as defined in G.S. 138A-3(30)a. to coerce a person as described in G.S. 138A-32(d)(1), (2), or (3) to support or contribute to a political candidate, a political committee as defined in G.S. 163-278.6, or a political party by threatening discipline

or promising preferential treatment with regard to that person's business with the individual's State office or that person's activities regulated by the individual's State office.

(b) Any person violating this section shall be guilty of a Class 2 misdemeanor.

(c) A State employee subject to the Personnel Act, probationary State employee, or temporary State employee who without probable cause falsely accuses a State employee or a person appointed to State office of violating this section shall be subject to discipline or change in employment status in accordance with the provisions of G.S. 126-35, 126-37, and 126-38 and may, as otherwise provided by law, be subject to criminal penalties for perjury or civil liability for libel, slander, or malicious prosecution."

SECTION 3.(b) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 4.(a) G.S. 14-234(a) reads as rewritten:

"**§ 14-234. Public officers or employees benefiting from public contracts; exceptions.**

(a) (1) No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.

(2) A public officer or employee who will derive a direct benefit from a contract with the public agency he or she serves, but who is not involved in making or administering the contract, shall not attempt to influence any other person who is involved in making or administering the contract.

(3) No public officer or employee may solicit or receive any gift, favor, reward, service, or promise of ~~reward~~ reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves."

SECTION 4.(b) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 5.(a) G.S. 120C-304(a) reads as rewritten:

"(a) No legislator or former legislator may register as a lobbyist under this ~~Chapter:~~Chapter

~~(1)~~ ~~While~~while in ~~office.~~office or

~~(2)~~ ~~Before the later of the close of session as set forth in G.S. 120C-100(a)(4)b.1 in which the legislator served or six months~~ within one year after leaving office."

SECTION 5.(b) G.S. 120C-304(b) reads as rewritten:

"(b) No public servant or former public servant as defined in G.S. 138A-3(30)a. may register as a lobbyist under this Chapter while in office or within ~~six months~~ one year after leaving office."

SECTION 5.(c) G.S. 120C-304(c) reads as rewritten:

"(c) No public servant or former public servant as defined in G.S. 138A-3(30)c. may register as a lobbyist under this Chapter within ~~six months~~ one year after separation from employment as a public servant. No other employee of any State agency may register as a lobbyist under this Chapter to lobby the State agency that previously employed the former employee within one year after voluntary separation or separation for cause from that State agency."

SECTION 5.(d) G.S. 120C-200 is amended by adding a new subsection to read:

"(f) In addition to the information required for registration under subsection (b) of this section, former employees of a State agency who register as a lobbyist within one year after voluntary separation or separation for cause from employment with a State agency shall also indicate which State agency with which the former employee was employed."

SECTION 5.(e) This section becomes effective October 1, 2010, and applies to individuals leaving office or employment on or after that date.

SECTION 6. G.S. 163-278.22(7) reads as rewritten:

"(7) To make investigations to the extent the Board deems necessary with respect to statements filed under the provisions of this Article and with respect to alleged failures to file any statement required under the provisions of this Article or Article 22M of the General Statutes and, upon complaint under oath by any registered voter, with respect to alleged violations of any part of this Article or Article 22M of the General Statutes. The Board has the authority to hire or contract with a special investigator, if needed, for this purpose."

SECTION 7.(a) G.S. 163-278.27 reads as rewritten:

"**§ 163-278.27. Criminal penalties; duty to report and prosecute.**

(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D, 163-278.40E, or 163-278.40J is guilty of a Class 2 misdemeanor. The statute of limitations as stated in G.S. 15-1 shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred.

(a1) A violation of G.S. 163-278.32 by making a certification knowing the information to be untrue is a Class I felony.

(a2) A person or individual who intentionally violates G.S. 163-278.14(a) or G.S. 163-278.19(a) and the unlawful contributions total more than ten thousand dollars ($10,000) per election is guilty of a Class I felony.

(b) Whenever the Board has knowledge of or has reason to believe there has been a violation of any section of this Article, it shall report that fact, together with accompanying details, to the following prosecuting authorities:

(1) In the case of a candidate for nomination or election to the State Senate or State House of Representatives: report to the district attorney of the prosecutorial district in which the candidate for nomination or election resides;

(2) In the case of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, State Attorney General, State Commissioner of Agriculture, State Commissioner of Labor, State Commissioner of Insurance, and all other State elective offices, Justice of the Supreme Court, Judge of the Court of Appeals, judge of a superior court, judge of a district court, and district attorney of the superior court: report to the district attorney of the prosecutorial district in which Wake County is located;

(3) In the case of an individual other than a candidate, including, without limitation, violations by members of political committees, referendum committees or treasurers: report to the district attorney of the prosecutorial district in which the individual resides; and

(4) In the case of a person or any group of individuals: report to the district attorney or district attorneys [of] the prosecutorial district or districts in which any of the officers, directors, agents, employees or members of the person or group reside.

(c) Upon receipt of such a report from the Board, the appropriate district attorney shall prosecute the individual or persons alleged to have violated a section or sections of this Article.

(d) As a condition of probation, a sentencing judge may order that the costs incurred by the State Board of Elections in investigating and aiding the prosecution of a case be paid to the State Board of Elections by the defendant on such terms and conditions as set by the judge."

SECTION 7.(b) G.S. 163-278.14(a) reads as rewritten:

"(a) No individual, political committee, or other entity shall make any contribution anonymously or in the name of another. No candidate, political committee, referendum committee, political party, or treasurer shall knowingly accept any contribution made by any individual or person in the name of another individual or person or made anonymously. If a candidate, political committee, referendum committee, political party, or treasurer receives anonymous contributions or contributions determined to have been made in the name of another, he shall pay the money over to the Board, by check, and all such moneys received by the Board shall be deposited in the Civil Penalty and Forfeiture Fund of the State of North Carolina. This subsection shall not apply to any contribution by an individual with the lawful authority to act on behalf of another individual, whether through power of attorney, trustee, or other lawful authority."

SECTION 7.(c) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 8. In order to foster and facilitate transparency of information relating to political campaigns, the State Board of Elections shall create an easily searchable database to provide any member of the public with access to the database to search by geographic location, occupation, employer, contributor, or contributee, within an election cycle and over a period of time as specified by the searcher.

SECTION 9. Article 2 of Chapter 143C of the General Statutes is amended to add new sections to read:

"**§ 143C-2-5. Grants and contracts database.**

(a) The Director of the Budget shall require the Office of State Budget and Management, with the support of Information Technology Services, to build and maintain a database and Web site for providing a single, searchable Web site on State spending for grants and contracts.

(b) Heads of the principal departments as listed in G.S. 143B-6 shall monthly conduct a review of all State contracts and grants administered by the principal department.

(c) All State institutions, departments, bureaus, agencies, or commissions subject to the authority of the Director of the Budget that maintain a Web site shall be required to include an access link to the NC OpenBook Web site on the home page of the agency Web site. Each agency shall also prominently display a search engine on the agency Web site home page to allow for ease of searching for information, including contracts and grants, on the agency's Web site.

"**§ 143C-2-6. Contents of database and Web site.**

(a) The Office of State Controller, the Department of Administration, and Information Technology Services shall provide the Office of State Budget and Management with the statewide information on State contracts necessary for the development and maintenance of the database and Web site required by this Article, with the information updated at least every 30 days.

(b) The Office of State Budget and Management shall work with the Office of the State Auditor and the Grant Information Center to incorporate data on grants into the database and Web site required by this Article. All State institutions, departments, bureaus, agencies, or commissions subject to the authority of the Governor shall make necessary changes to existing reporting processes for grants and contracts to ensure the goals of this Article are met.

(c) All State contracts and grants awarded in amounts in excess of ten thousand dollars ($10,000) shall be included in the database and Web site required by this Article. The following information shall be provided for each contract or grant:

(1) The name of the entity receiving the award.
(2) The amount of the award or estimated award.
(3) Information on the award, including transaction type, funding agency, duration of contract, or grant award.
(4) The location of the entity receiving the award.
(5) Background information on the entity receiving the award.
(6) Time lines for anticipated completion of the work required.
(7) Expected outcomes of the contract or grant and specific deliverables required.
(8) Contact information for the responsible State government officer or administrator of the contract or grant."

SECTION 10. G.S. 138A-3(30) reads as rewritten:

"(30) Public servants. – All of the following:

a. Constitutional officers of the State and individuals elected or appointed as constitutional officers of the State prior to taking office.
b. Employees of the Office of the Governor.
c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.
d. The chief deputy and chief administrative assistant of each individual designated under sub-subdivision a. or c. of this subdivision.
e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to individuals designated under sub-subdivision a., c., or d. of this subdivision.
f. Employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.
g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.
h. Judicial employees.
i. All voting members of boards, including ex officio members, permanent designees of any voting member, and members serving by executive, legislative, or judicial branch appointment.
j. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.
k. For the Community College System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community College System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.
l. Members of the ~~Commission.~~Commission, the executive director, and the assistant executive director of the Commission.
m. Individuals under contract with the State working in or against a position included under this subdivision.
n. The director of the Office of State Personnel.
o. The State Controller.

p. The chief information officer, deputy chief information officers, chief financial officers, and general counsel of the Office of Information Technology.
q. The director of the State Museum of Art.
r. The executive director of the Agency for Public Telecommunication.
s. The Commissioner of Motor Vehicles.
t. The Commissioner of Banks and the chief deputy commissioners of the Banking Commission.
u. The executive director of the North Carolina Housing Finance Agency.
v. The executive director, chief financial officer, and chief operating officer of the North Carolina Turnpike Authority."

SECTION 11. G.S. 143B-478 is amended by adding a new subsection to read:

"(f) The Commission shall be treated as a board for purposes of Chapter 138A of the General Statutes."

SECTION 12. G.S. 138A-22 is amended by adding a new subsection to read:

"(d1) In addition to subsections (a) and (d) of this section, a covered person holding elected office or a former covered person who held elected office subject to this Article shall file a statement of economic interest in all of the following instances, as specified:

(1) Filed on or before April 15 of the year following the year a covered person elects not to continue in the position making that individual a covered person, with all information provided in the statement of economic interest current as of the last day of December of the preceding year.
(2) Filed on or before April 15 of the year following the year the covered person resigns from the position making that individual a covered person, with all information provided in the statement of economic interest current as of the last day in the position.
(3) Filed on or before April 15 of the year following the year the covered person dies while holding the position that made the deceased a covered person, with all information provided in the statement of economic interest current as of the day of death. The statement of economic interest shall be filed by the personal representative of the estate."

SECTION 13.(a) G.S. 138A-24(a) reads as rewritten:

"**§ 138A-24. Contents of statement.**

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

(1) Except as otherwise provided in this subdivision, the name, current mailing address, occupation, employer, and business of the filing person. Any individual holding or seeking elected office for which residence is a qualification for office shall include a home address. A judicial officer may use a current mailing address instead of the home address on the form required in this subsection. The judicial officer may also use the initials instead of the name of any unemancipated child of the judicial officer who also resides in the household of the judicial officer. If the judicial officer provides the initials of an unemancipated child, the judicial officer shall concurrently provide the name of the unemancipated child to the Commission. The name of an unemancipated child provided by the judicial officer to the Commission shall not be a public record under Chapter 132 of the General Statutes and is privileged and confidential.

(2) A list of each asset and liability included in this subdivision of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars ($10,000) owned by the filing person and the filing person's immediate family, except assets or liabilities held in a blind trust. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the filing person or the filing person's immediate family, including descriptions adequate to determine the location by city and county of each parcel.

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

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

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

e. The name of each publicly owned company. For purposes of this sub-subdivision, the term "publicly owned company" shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

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

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

f. The name of each nonpublicly owned company or business entity, including interests in sole proprietorships, partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations.

g. For each company or business entity listed under sub-subdivision f. of this subdivision, if known, a list of any other companies or business entities in which the company or business entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000).

~~h. A list of all nonpublicly owned businesses of which the filing person and the filing person's immediate family is an officer, employee, director, partner, owner, or member or manager of a limited liability company.~~

i. For any company or business entity listed under sub-subdivisions f., g., and h. of this subdivision, if known, any company or business entity that has any material business dealings, contracts, or other involvement with the State, or is regulated by the State, including a brief description of the business activity.

j. For a vested trust created, established, or controlled by the filing person of which the filing person or the members of the filing person's immediate family are the beneficiaries, excluding a blind trust, the name and address of the trustee, a description of the trust, and the filing person's relationship to the trust.

k. A list of all liabilities, excluding indebtedness on the filing person's primary personal residence, by type of creditor and debtor.

l. Repealed by Session Laws 2007-348, s. 34. See Editor's note for effective date.

m. A list of all stock options in a company or business not otherwise disclosed on this statement.

(3) The name of each source (not specific amounts) of income of more than five thousand dollars ($5,000) received during the previous year by business or industry type, if that source is not listed under subdivision (2) of this subsection. Income shall include salary, wages, professional fees, honoraria, interest, dividends, rental income, and business income from any source other than capital gains, federal government retirement, military retirement, or social security income.

(4) If the filing person is a practicing attorney, an indication of whether the filing person, or the law firm with which the filing person is affiliated, earned legal fees during the past year in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

a. Administrative law.
b. Admiralty law.
c. Corporate law.
d. Criminal law.
e. Decedents' estates law.
f. Environmental law.
g. Insurance law.
h. Labor law.
i. Local government law.
j. Negligence or other tort litigation law.
k. Real property law.
l. Securities law.
m. Taxation law.
n. Utilities regulation law.

(5) Except for a filing person in compliance under subdivision (4) of this subsection, if the filing person is a licensed professional or provides consulting services, either individually or as a member of a professional association, a list of categories of business and the nature of services rendered, for which payment for services were charged or paid during the past year in excess of ten thousand dollars ($10,000).

(6) An indication of whether the filing person, the filing person's employer, a member of the filing person's immediate family, or the immediate family member's employer is licensed or regulated by, or has a business relationship with, the board or employing entity with which the filing person is or will be associated. This subdivision does not apply to a legislator, a judicial officer, or that legislator's or judicial officer's immediate family.

(7) A list of societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction, in which the public servant or a member of the public servant's immediate family is a director, officer, or governing board member. This subdivision does not apply to a legislator, a judicial officer, or that legislator's or judicial officer's immediate family.

(8) A list of all things with a total value of over two hundred dollars ($200.00) per calendar quarter given and received without valuable consideration and under circumstances that a reasonable person would conclude that the thing was given for the purpose of lobbying, if such things were given by a person not required to report under Chapter 120C of the General Statutes, excluding things given by a member of the filing person's extended family. The list

shall include only those things received during the 12 months preceding the reporting period under subsection (d) of this section, and shall include the source of those things. The list required by this subdivision shall not apply to things of monetary value received by the filing person prior to the time the filing person filed or was nominated as a candidate for office, as described in G.S. 138A-22, or was appointed or employed as a covered person.

(9) A list of any felony convictions of the filing person, excluding any felony convictions for which a pardon of innocence or order of expungement has been granted.

(10) Any other information that the filing person believes may assist the Commission in advising the filing person with regards to compliance with this Chapter.

(11) A list of any nonprofit corporation or organization with which associated during the preceding calendar year, including a list of which of those nonprofit corporations or organizations with which associated do business with the State or receive State funds and a brief description of the nature of the business, if known or with which due diligence could reasonably be known.

(12) A statement of whether the filing person or the filing person's immediate family is or has been a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes within the preceding 12 months.

(13) The name of each business with which associated that the filing person or filing person's immediate family is an employee, director, officer, partner, proprietor, or member or manager."

SECTION 13.(b) G.S. 138A-24(c) reads as rewritten:

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

SECTION 13.(c) G.S. 138A-24(a)(2)i. is recodified as G.S. 138A-24(a)(14).

SECTION 13.(d) G.S. 138A-24(a)(14), as enacted by Section 13(c) of this act, reads as rewritten:

"(14) For any company or business entity listed under subdivision (13) of this subsection and sub-subdivisions ~~f., g., and h.~~ f. and g. of subdivision (2) of this ~~subdivision,~~ subsection, if known, a statement whether ~~any~~ that company or business entity ~~that~~ has any material business ~~dealings, contracts, or other involvement~~ business contracts with the State, or is regulated by the State, including a brief description of the business activity."

SECTION 13.(e) This section becomes effective January 1, 2011, and applies to statements of economic interest filed on or after that date.

SECTION 14. G.S. 138A-41 reads as rewritten:

"**§ 138A-41. Other ethics standards.**

(a) Nothing in this Chapter shall prevent the Supreme Court, the Committee, the Legislative Services Commission, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, or other boards from adopting additional or supplemental ethics standards applicable to that public agency's operations.

(b) The Governor, as a constitutional officer of the State, shall have the authority to adopt additional and supplemental ethics standards applicable to any appointee of the Governor

to any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, whether advisory or non-advisory in authority. If the Governor adopts such ethics standards, the standards shall be published in the North Carolina Register and made available to each appointee subject to the ethics standards.

(c) The Governor, as a constitutional officer of the State, shall have the authority to adopt minimum ethics standards applicable to any employee of a State agency. If the Governor adopts such standards, the ethics standards shall be published in the North Carolina Register and made available to each employee subject to the ethics standards."

SECTION 15.(a) G.S. 120C-303(a) reads as rewritten:

"(a) Except as provided in subsection (b) of this section, no lobbyist or lobbyist principal may do any of the following:

(1) Knowingly give a gift to a designated individual.

(2) Knowingly give a gift with the intent that a designated individual be ~~the~~ an ultimate recipient."

SECTION 15.(b) G.S. 138A-32(c) reads as rewritten:

"(c) No public servant, legislator, or legislative employee shall knowingly accept a gift from a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes. No legislator or legislative employee shall knowingly accept a gift from liaison personnel designated under Chapter 120C of the General Statutes. No public servant, legislator, or legislative employee shall accept a gift knowing all of the following:

(1) The gift was obtained indirectly from a lobbyist, lobbyist principal, or liaison personnel registered under Chapter 120C of the General Statutes.

(2) The lobbyist, lobbyist principal, or liaison personnel registered under Chapter 120C of the General Statutes intended for ~~the~~ an ultimate recipient of the gift to be a public servant, legislator, or legislative employee as provided in G.S. 120C-303."

SECTION 15.(c) G.S. 138A-32(d1) reads as rewritten:

"(d1) No public servant shall accept a gift knowing all of the following:

(1) The gift was obtained indirectly from a person described under subdivisions (d)(1), (2), and (3) of this section.

(2) The person described under subdivisions (d)(1), (2), and (3) of this section intended for ~~the~~ an ultimate recipient of the gift to be a public servant."

SECTION 15.(d) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 16. G.S. 120C-101(c) reads as rewritten:

"(c) In adopting rules under this Chapter, the Commission is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes, except that the Commission shall comply with G.S. 150B-21.2(d). At least 30 business days prior to adopting a rule, the Commission shall:

(1) Publish the proposed rules in the North Carolina Register.

(2) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet to be posted within five business days.

(3) Notify those on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a rule and of the public hearing.

(4) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.

(5) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted under this subsection becomes effective the first day of the month following the month the final rule is submitted to the Codifier of Rules for entry into the North Carolina Administrative ~~Code.~~Code, and applies prospectively. A rule adopted by the Commission that does not comply with the procedural requirements of this subsection shall be null, void, and without effect. For purposes of this subsection, a rule is any Commission regulation, standard, or statement of general applicability that interprets an enactment by the General Assembly or Congress, or a regulation adopted by a federal agency, or that describes the procedure or practice requirements of the Commission."

SECTION 17.(a) G.S. 120C-100(a)(9) reads as rewritten:

"(9) Lobby or Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that designated individual's immediate family.

b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that designated individual's immediate family with the intention of influencing current or future legislative or executive action, or both.

The ~~term~~ terms "lobby" or "lobbying" ~~does~~ do not include communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both."

SECTION 17.(b) G.S. 120C-100(a)(10) reads as rewritten:

"(10) Lobbyist. – An individual who engages in lobbying for payment and meets any of the following criteria:

a. Repealed by Session Laws 2007-348, s. 8(a), effective October 10, 2007.

b. Represents another person or governmental unit, but is not directly employed by that person or governmental ~~unit, and receives payment for services.~~ unit.~~For the purposes of this sub-subdivision, the term "payment for services" shall not include reimbursement of actual travel and subsistence.~~

c. Contracts for ~~economic consideration~~ payment for ~~the purpose of~~ lobbying.

d. Is employed by a person and a significant part of that employee's duties include lobbying. In no case shall an employee be considered a lobbyist if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)a. of this section or if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)b. of this section.

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700 or registered as liaison personnel under Article 5 of this Chapter."

SECTION 17.(c) G.S. 120C-100(a)(11) reads as rewritten:

"(11) Lobbyist principal and principal. – The person or governmental unit on whose behalf the lobbyist ~~lobbies.~~ lobbies and who makes payment for the lobbying. In the case where a lobbyist is ~~compensated~~ paid by a law firm, consulting firm, or other entity retained by a person or governmental unit for lobbying, the principal is the person or governmental unit whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist principal is the

association or other organization, not the individual members of the association or other organization.

The term "lobbyist principal" shall not include those designating registered liaison personnel under Article 5 of this Chapter."

SECTION 17.(d) G.S. 120C-100(a)(11k) reads as rewritten:

"(11k) ~~Payment for services.~~Payment. – Any money, thing of value, or economic benefit ~~paid~~ conveyed to ~~a~~ the lobbyist for ~~the purpose of lobbying~~ lobbying, other than reimbursement of actual travel, administrative expenses, or subsistence."

SECTION 17.(e) G.S. 120C-100(a)(13) reads as rewritten:

"(13) Solicitation of others. – A solicitation of members of the public to communicate directly with or contact one or more designated individuals ~~for the purpose of influencing or attempting~~ to influence or attempt to influence legislative or executive action to further the solicitor's position on that legislative or executive action, when that request is made by any of the following methods:

a. A broadcast, cable, or satellite transmission.
b. An e-mail communication or a Web site posting.
c. A communication delivered by print media as defined in G.S. 163-278.38Z.
d. A letter or other written communication delivered by mail or by comparable delivery service.
e. Telephone.
f. A communication at a conference, meeting, or similar event.

The term "solicitation of others" does not include communications made by a person or by the person's agent to that person's stockholders, employees, board members, officers, members, subscribers, or other recipients who have affirmatively assented to receive the person's regular publications or notices."

SECTION 17.(f) G.S. 120C-300 reads as rewritten:

"**§ 120C-300. Contingency fees prohibited.**

(a) No individual shall act as a lobbyist ~~for~~ and receive payment for ~~services~~ lobbying that is dependent upon the result or outcome of any legislative or executive action.

(b) This section shall not apply to an individual doing business with the State who is engaged in sales with respect to that business with the State whose regular remuneration agreement includes commissions based on those sales. For purposes of this subsection, the term "regular remuneration" means any money, thing of value, or economic benefit conferred on or received by the individual in return for services rendered or to be rendered by that individual or another.

(c) Any payment ~~for services~~ to a lobbyist in violation of this section is subject to forfeiture and shall be paid into the Civil Penalty and Forfeiture Fund."

SECTION 17.(g) G.S. 120C-305 reads as rewritten:

"**§ 120C-305. Prohibition on the use of cash or credit of the lobbyist.**

No lobbyist or another acting on the lobbyist's behalf shall ~~permit~~ lobby by permitting a designated individual, or that designated individual's immediate family member, to use the cash or credit of the lobbyist ~~for the purpose of lobbying~~ unless the lobbyist is in attendance at the time of the reportable expenditure. G.S. 120C-303 applies to this section."

SECTION 17.(h) G.S. 120C-400(a) reads as rewritten:

"**§ 120C-400. Reporting of reportable expenditures.**

(a) For purposes of this Chapter, all reportable expenditures made for ~~the purpose of~~ lobbying shall be reported, including the following:

(1) Reportable expenditures benefiting or made on behalf of a designated individual in the regular course of that designated individual's employment.

(1a) Reportable expenditures benefiting or made on behalf of a designated individual's immediate family member in the regular course of that immediate family member's employment.

(2) Contractual arrangements or direct business relationships between a lobbyist or lobbyist principal and a designated individual, or that designated individual's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Reportable expenditures reimbursed to a lobbyist in the ordinary course of business by the lobbyist principal or other employer."

SECTION 17.(i) G.S. 120C-402(b) reads as rewritten:

"(b) The report shall include all of the following for the reporting period:

(1) All reportable expenditures made for ~~the purpose of~~ lobbying.

(2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars ($3,000).

(3) Reportable expenditures reimbursed by the lobbyist principal, or another person or governmental unit on the lobbyist principal's behalf.

(4) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9), 138A-32(e)(11), 138A-32(e)(12), and all gifts given under G.S. 138A-32(e)(10) with a value of more than ten dollars ($10.00)."

SECTION 17.(k) G.S. 120C-403 reads as rewritten:

"**§ 120C-403. Lobbyist principal's reports.**

(a) Each lobbyist principal shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist principal.

(b) The report shall be filed whether or not reportable expenditures are made, shall be due ~~10~~ 15 business days after the end of the reporting period, and shall include all of the following for the reporting period:

(1) All reportable expenditures made for ~~the purpose of~~ lobbying.

(2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars ($3,000).

(3) Recodified as G.S. 120C-403(d).

(4) With respect to each lobbyist registered under G.S. 120C-206, reportable expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those reportable expenditures.

(5) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9), 138A-32(e)(11), 138A-32(e)(12), and all gifts given under G.S. 138A-32(e)(10) with a value of more than two hundred dollars ($200.00).

(6) With respect to each lobbyist registered under G.S. 120C-206, the name of each person or governmental unit not otherwise registered as a lobbyist principal for whom the lobbyist principal directs or permits the lobbyist to lobby, whether for pay or not.

(c) In addition to the reports required by this section, each lobbyist principal incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section.

(d) In addition to the reports required by this section, each lobbyist principal shall annually, in the last report of the registration period under G.S. 120C-200(d), report the total of all payments for lobbying and other activities described in subdivision (2) of subsection (e) of this section made during the registration period, as applicable:

(1) If a lobbyist represents the lobbyist principal, but is not directly employed by that lobbyist principal, the portion of the payment that is for lobbying and to whom it was paid.

(2) If a lobbyist is under contract with the lobbyist principal for lobbying, the portion of the contract that is reasonably allocated for lobbying.

(3) If a lobbyist is a full-time employee of the principal, or is paid by means of an annual fee or retainer, the principal shall estimate and report the portion of the salary, fee, or retainer salary that is reasonably allocated for lobbying.

(e) For purposes of subsection (d) of this section, the following shall apply:

(1) A lobbyist principal may rely upon a statement by the lobbyist estimating the portion of the salary or other payment that is reasonably allocated for lobbying.

(2) In addition to reporting any payment to a lobbyist for lobbying under subsection (d) of this section, a lobbyist principal shall report any payment to a lobbyist for any of the following communications and activities that were used to lobby within the registration period under G.S. 120C-200(d):

a. Research.

b. Drafting of written communications.

c. Monitoring of proposed or pending legislative action or executive action, including time spent preparing communications with the lobbyist principal to relate information on proposed or pending legislative action or executive action.

d. Time spent advising and rendering opinions to the lobbyist principal as to the construction and effect of proposed or pending legislative action or executive action.

(3) A lobbyist principal is required to report any payment to a lobbyist for any of the following:

a. Direct lobbying communications or direct lobbying activities with a designated individual or that designated individual's immediate family.

b. Communications or activities to develop goodwill, including the building or relationships, with a designated individual or that designated individual's immediate family member."

SECTION 17.(l) G.S. 120C-404(b)(1) reads as rewritten:

"(1) All reportable expenditures made for ~~the purpose of~~ lobbying during the reporting period."

SECTION 17.(m) G.S. 120C-501(e) reads as rewritten:

"(e) The Board of Governors of the University of North Carolina and its constituent institutions, or the liaison personnel designated by that board or the constituent institutions, shall not give, for ~~the purpose of~~ lobbying, athletic tickets to any designated individual, except for those who are described in G.S. 138A-3(30)j. or those who are students and receive tickets on the same basis as other students."

SECTION 17.(n) G.S. 120C-800(a) reads as rewritten:

"(a) If a designated individual accepts a reportable expenditure made for ~~the purpose of~~ lobbying with a total value of over two hundred dollars ($200.00) per calendar quarter from a person or group of persons acting together, exempted or not otherwise covered by this Chapter, the person, or group of persons, making the reportable expenditure shall report the date, a

description of the reportable expenditure, the name and address of the person, or group of persons, making the reportable expenditure, the name of the designated individual accepting the reportable expenditure, and the estimated fair market value, or face value if shown, of the reportable expenditure."

SECTION 17.(o) G.S. 138A-3(1) reads as rewritten:

"(1) Blind trust. – A trust established by or for the benefit of a covered person or a member of the covered person's immediate family for ~~the purpose of~~ divestiture of all control and knowledge of assets. A trust qualifies as a blind trust under this subdivision if the covered person or a member of the covered person's immediate family has no knowledge of the holdings and sources of income of the trust, the trustee of the trust is independent of and not associated with or employed by the covered person or a member of the covered person's immediate family and is not a member of the covered person's extended family, and the trustee has sole discretion as to the management of the trust assets."

SECTION 17.(p) G.S. 138A-3(15) reads as rewritten:

"(15) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, liaison personnel, or a person described under G.S. 138A-32(d)(1), (2), or (3). The following shall not be considered gifts under this subdivision:

a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.

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

c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for ~~the purpose of~~ lobbying.

d. Academic or athletic scholarships based on the same criteria as applied to the public.

e. Campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

f. Expressions of condolence related to a death of an individual, sent within a reasonable time of the death, if the expression is one of the following:

1. A sympathy card, letter, or note.
2. Flowers.
3. Food or beverages for immediate consumption.
4. Donations to a religious organization, charity, the State or a political subdivision of the State, not to exceed a total of two hundred dollars ($200.00) per death per donor."

SECTION 17.(q) G.S. 138A-13(f) reads as rewritten:

"(f) This section shall apply to judicial officers only for ~~the purpose of~~ advice related to Article 3 of this Chapter."

SECTION 17.(r) G.S. 138A-24(a)(8) reads as rewritten:

"(8) A list of all things with a total value of over two hundred dollars ($200.00) per calendar quarter given and received without valuable consideration and under circumstances that a reasonable person would conclude that the thing was given for ~~the purpose of~~ lobbying, if such things were given by a person not required to report under Chapter 120C of the General Statutes, excluding things given by a member of the filing person's extended family. The list

shall include only those things received during the 12 months preceding the reporting period under subsection (d) of this section, and shall include the source of those things. The list required by this subdivision shall not apply to things of monetary value received by the filing person prior to the time the filing person filed or was nominated as a candidate for office, as described in G.S. 138A-22, or was appointed or employed as a covered person."

SECTION 17.(s) G.S. 138A-32(e)(10) reads as rewritten:

"(10) Gifts given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship provided all of the following conditions are met:

a. The relationship is not related to the public servant's, legislator's, or legislative employee's public service or position.

b. The gift is made under circumstances that a reasonable person would conclude that the gift was not given ~~for the purpose of lobbying.~~ to lobby."

SECTION 17.(t) This section is effective January 1, 2011, and applies to offenses committed on or after that date, and reports filed on or after that date.

SECTION 18.(a) G.S. 126-23 reads as rewritten:

"**§ 126-23. Certain records to be kept by State agencies open to inspection.**

(a) Each department, agency, institution, commission and bureau of the State shall maintain a record of each of its employees, showing the following information with respect to each such employee:

(1) ~~name,~~Name.

(2) ~~age,~~Age.

(3) ~~date~~Date of original employment or appointment to the State ~~service,~~service.

(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its ~~possession,~~possession.

(5) ~~current position,~~ Current position.

(6) ~~title,~~Title.

(7) ~~current salary,~~Current salary.

(8) ~~date~~Date and amount of ~~most recent~~each increase or decrease in ~~salary,~~salary with that department, agency, institution, commission, or bureau.

(9) ~~date~~Date and type of ~~most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification,~~classification with that department, agency, institution, commission, or bureau.

(10) ~~and the~~The office or station to which the employee is currently assigned.

(b) For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Subject only to rules and regulations for the safekeeping of the records, adopted by the State Personnel Commission, every person having custody of such records shall permit them to be inspected and examined and copies thereof made by any person during regular business hours. Any person who is denied access to any such record for the purpose of inspecting, examining or copying the same shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 18.(b) G.S. 115C-320 reads as rewritten:

"**§ 115C-320. Certain records open to inspection.**

(a) Each local board of education shall maintain a record of each of its employees, showing the following information with respect to each employee:

(1) ~~name,~~ Name.

(2) ~~age,~~ Age.

(3) ~~date~~Date of original employment or ~~appointment,~~appointment.

(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the board has the written contract or a record of the oral contract in its ~~possession,~~possession.

(5) ~~current position,~~Current position.

(6) ~~title,~~Title.

(7) ~~current salary,~~Current salary.

(8) ~~date~~Date and amount of ~~most recent~~ each increase or decrease in ~~salary,~~ salary with that local board of education.

(9) ~~date~~Date and type of ~~most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification, and~~classification with that local board of education.

(10) ~~the~~The office or station to which the employee is currently assigned.

(b) For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Subject only to rules and regulations for the safekeeping of records adopted by the local board of education, every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours. The name of a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes shall not be open to inspection and shall be redacted from any record released pursuant to this section. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 18.(c) G.S. 115D-28 reads as rewritten:

"**§ 115D-28. Certain records open to inspection.**

(a) Each board of trustees shall maintain a record of each of its employees, showing the following information with respect to each employee:

(1) ~~name,~~ Name.

(2) ~~age,~~ Age.

(3) ~~date~~Date of original employment or ~~appointment,~~appointment.

(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the board has the written contract or a record of the oral contract in its ~~possession,~~possession.

(5) ~~current position,~~ Current position.

(6) ~~title,~~ Title.

(7) ~~current salary,~~ Current salary.

(8) ~~date~~Date and amount of ~~most recent~~each increase or decrease in ~~salary,~~ salary with that community college.

(9) ~~date~~Date and type of ~~most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification, and~~classification with that community college.

(10) ~~the~~The office or station to which the employee is currently assigned.

(b) For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Subject only to rules and regulations for the safekeeping of records adopted by the board of trustees, every person having custody of the records shall permit them to be inspected

and examined and copies made by any person during regular business hours. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 18.(d) G.S. 122C-158(b) reads as rewritten:

"(b) The following information with respect to each employee is a matter of public record:

(1) ~~name;~~ Name.
(2) ~~age;~~ Age.
(3) ~~date~~Date of original employment or appointment to the area ~~authority;~~authority.
(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its ~~possession;~~possession.
(5) ~~current position~~ Current position.
(6) ~~title;~~ Title.
(7) ~~current salary;~~ Current salary.
(8) ~~date~~Date and amount of ~~most recent~~each increase or decrease in ~~salary;~~ salary with that area authority.
(9) ~~date~~ Date and type of ~~the most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification;~~ ~~and~~classification with that area authority.
(10) ~~the~~ The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The area authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying during regular business hours, subject only to rules for the safekeeping of public records as the area authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue these orders."

SECTION 18.(f) G.S. 153A-98(b) reads as rewritten:

"(b) The following information with respect to each county employee is a matter of public record:

(1) ~~name;~~ Name.
(2) ~~age;~~ Age.
(3) ~~date~~ Date of original employment or appointment to the county ~~service;~~service.
(4) ~~the~~ The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the county has the written contract or a record of the oral contract in its ~~possession;~~possession.
(5) ~~current position~~ Current position.
(6) ~~title;~~ Title.
(7) ~~current salary;~~ Current salary.
(8) ~~date~~Date and amount of ~~the most recent~~each increase or decrease in ~~salary;~~ salary with that county.
(9) ~~date~~ Date and type of ~~the most recent~~each promotion, demotion, transfer, suspension, separation or other change in position ~~classification;~~ ~~and~~classification with that county.
(10) ~~the~~ The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The board of county commissioners shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the board of commissioners may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

SECTION 18.(g) G.S. 160A-168(b) reads as rewritten:

"(b) The following information with respect to each city employee is a matter of public record:

(1) ~~name;~~ Name.
(2) ~~age;~~ Age.
(3) ~~date~~Date of original employment or appointment to the ~~service;~~service.
(4) ~~the~~ The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the city has the written contract or a record of the oral contract in its ~~possession;~~possession.
(5) ~~current position~~ Current position.
(6) ~~title;~~Title.
(7) ~~current salary;~~Current salary.
(8) ~~date~~Date and amount of ~~the most recent~~each increase or decrease in ~~salary;~~ salary with that municipality.
(9) ~~date~~Date and type of ~~the most~~each recent promotion, demotion, transfer, suspension, separation, or other change in position ~~classification; and~~classification with that municipality.
(10) ~~the~~The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The city council shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the city council may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

SECTION 18.(h) G.S. 162A-6.1(b) reads as rewritten:

"(b) The following information with respect to each authority employee is a matter of public record:

(1) ~~name;~~ Name.
(2) ~~age;~~ Age.
(3) ~~date~~Date of original employment or appointment to the ~~service;~~service.
(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the authority has the written contract or a record of the oral contract in its ~~possession;~~possession.
(5) ~~current position~~ Current position.
(6) ~~title;~~ Title.
(7) ~~current salary;~~Current salary.

(8) ~~date~~Date and amount of ~~the most recent~~each increase or decrease in ~~salary;~~ salary with that authority.

(9) ~~date~~ Date and type of ~~the most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification;~~ ~~and~~classification with that authority.

(10) ~~the~~The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

SECTION 18.(i) This section becomes effective October 1, 2010.

SECTION 19.(a) G.S. 120C-600 is amended by adding a new subsection to read:

"(d) The Secretary shall publish annual statistics on complaints received and systematic reviews conducted under this section, including the number of systematic reviews, the number of complaints, the number of apparent violations of this Chapter referred to a district attorney, the number of complaints dismissed, and the number and age of complaints pending. Subject to the provisions of Chapter 132 of the General Statutes, the levy of all civil fines, including the amount of the fine and the identity of the person or governmental unit against whom it was levied, shall be a public record as defined in G.S. 132-1(a)."

SECTION 19.(b) G.S. 120C-601 is amended by adding a new subsection to read:

"(d) The Commission shall publish annual statistics on complaints, including the number of complaints, the number of apparent violations of this Chapter referred to a district attorney, the number of dismissals, and the number and age of complaints pending."

SECTION 20.(a) Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.3E. Mediation of public records disputes.**

(a) Voluntary Mediation. – The parties to a public records dispute under Chapter 132 of the General Statutes may agree at anytime prior to filing a civil action under Chapter 132 of the General Statutes to mediation of the dispute under the provisions of this section. Mediation of a public records dispute shall be initiated by filing a request for mediation with the clerk of superior court in a county in which the action may be brought.

(b) Mandatory Mediation. – Subsequent to filing a civil action under Chapter 132 of the General Statutes, a person shall initiate mediation pursuant to this section. Such mediation shall be initiated no later than 30 days from the filing of responsive pleadings with the clerk in the county where the action is filed.

(c) Initiation of Mediation. – The Administrative Office of the Courts shall prescribe a request for mediation form. The party filing the request for mediation shall mail a copy of the request by certified mail, return receipt requested, to each party to the dispute. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(d) Mediation Procedure. – Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(e) Waiver of Mediation. – The parties to the dispute may waive the mediation required by this section by informing the mediator of the parties' waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting.

(f) Certification That Mediation Concluded. – Immediately upon a waiver of mediation under subsection (e) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party.

(g) Time Periods Tolled. – Time periods relating to the filing of a claim or the taking of other action with respect to a public records dispute, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (f) of this section.

(h) Nothing in this section shall be prevent a party seeking production of public records from seeking injunctive or other relief, including production of public records prior to any scheduled mediation."

SECTION 20.(b) G.S. 7A-38.2(a) reads as rewritten:

"(a) The Supreme Court may adopt standards of conduct for mediators and other neutrals who are certified or otherwise qualified pursuant to G.S. 7A-38.1, 7A-38.3, 7A-38.3B, 7A-38.3D, 7A-38.3E, and 7A-38.4A, or who participate in proceedings conducted pursuant to those sections. The standards may also regulate mediator and other neutral training programs. The Supreme Court may adopt procedures for the enforcement of those standards."

SECTION 20.(c) G.S. 132-9 reads as rewritten:

"**§ 132-9. Access to records.**

(a) Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying, and the court shall have jurisdiction to issue such ~~orders.~~ orders if the person has complied with G.S. 7A-38.3E. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(b) In an action to compel disclosure of public records which have been withheld pursuant to the provisions of G.S. 132-6 concerning public records relating to the proposed expansion or location of particular businesses and industrial projects, the burden shall be on the custodian withholding the records to show that disclosure would frustrate the purpose of attracting that particular business or industrial project.

(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court shall allow ~~the prevailing~~ a party seeking disclosure of public records who substantially prevails to recover its reasonable attorneys' fees if attributed

to those public ~~records, unless the court finds the agency acted with substantial justification in denying access to the public records or the court finds circumstances that would make the award of attorneys' fees unjust.~~records. The court may not assess attorneys' fees against the governmental body or governmental unit if the court finds that the governmental body or governmental unit acted in reasonable reliance on any of the following:

(1) A judgment or an order of a court applicable to the governmental unit or governmental body.

(2) The published opinion of an appellate court, an order of the North Carolina Business Court, or a final order of the Trial Division of the General Court of Justice.

(3) A written opinion, decision, or letter of the Attorney General.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court shall assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs."

SECTION 20.(d) This section becomes effective October 1, 2010, and applies to actions filed on or after that date.

SECTION 21.(a) G.S. 138A-14(b) reads as rewritten:

"(b) The Commission shall ~~make~~ offer basic ethics education and awareness presentations to all public servants and their immediate staffs, upon their election, appointment, or employment, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant shall participate in an ethics presentation approved by the Commission within six months of the public servant's election, reelection, appointment, or employment, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate."

SECTION 21.(b) G.S. 138A-24(c2) is recodified as G.S. 138A-22(c2).

SECTION 21.(c) The catch line to G.S. 138A-37 of the General Statutes reads as rewritten:

"**§ 138A-37. Legislator participation in ~~official~~ legislative actions.**"

SECTION 21.(d) G.S. 138A-38(a)(6) and (7) read as rewritten:

"**§ 138A-38. Permitted participation exception.**

(a) Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may participate in an official action or legislative action under any of the following circumstances except as specifically limited:

...

(6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action because the covered person is disqualified from acting under ~~G.S. 130-36,~~ G.S. 138A-36, G.S. 138A-37, or this section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.

(7) When a public servant notifies the Commission in writing that the public ~~servant judicial employee,~~ servant, or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals

having legal authority to take an official action, and the public servant discloses in writing the circumstances and nature of the conflict of interest."

SECTION 21.(e) G.S. 120-104(c) reads as rewritten:

"(c) A legislator who acts in reliance on a formal advisory opinion issued by the Committee under this section shall be entitled to the immunity granted under ~~G.S. 138A-13(b).~~ G.S. 138A-13(b1)."

SECTION 21.(f) G.S. 120C-800(b) reads as rewritten:

"(b) If the person making the reportable expenditure in subsection (a) of this section is outside North Carolina, and the designated individual accepting the reportable expenditure is also outside North Carolina at the time the designated individual accepts the reportable expenditure, then the designated individual accepting the reportable expenditure shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with ~~G.S. 138A-24(a)(2).~~G.S. 138A-24(a)(8)."

SECTION 22. Except as otherwise provided, this act is effective when it becomes law.

H

HOUSE BILL 666*

Short Title:	Clarify Status of DWI Treatment Courts.	(Public)
Sponsors:	Representatives M. Alexander, Farmer-Butterfield (Primary Sponsors); Earle, Harrison, and Lucas.	
Referred to:	Mental Health Reform, if favorable, Judiciary III.	

March 19, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT DWI TREATMENT COURTS ARE A TYPE OF DRUG TREATMENT COURT UNDER THE DRUG TREATMENT COURT ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-791 reads as rewritten:

"**§ 7A-791. Purpose.**

The General Assembly recognizes that a critical need exists in this State for judicial programs that will reduce the incidence of alcohol and other drug abuse or dependence and crimes, including the offense of driving while impaired, delinquent acts, and child abuse and neglect committed as a result of alcohol and other drug abuse or dependence, and child abuse and neglect where alcohol and other drug abuse or dependence are significant factors in the child abuse and neglect. It is the intent of the General Assembly by this Article to create a program to facilitate the creation of local drug treatment court ~~programs.~~ programs and driving while impaired (DWI) treatment court programs."

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

HOUSE BILL 726
Committee Substitute Favorable 5/13/09

Short Title: Clarify Expunctions. (Public)

Sponsors:

Referred to:

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON'S RECORD MAY BE EXPUNGED FOR A FIRST MISDEMEANOR OFFENSE COMMITTED WHEN THE PERSON WAS LESS THAN EIGHTEEN YEARS OLD EVEN THOUGH THE PERSON IS EIGHTEEN YEARS OLD OR OLDER AT THE TIME OF CONVICTION; TO PROVIDE THAT A PERSON'S RECORD MAY BE EXPUNGED FOR A FIRST MISDEMEANOR POSSESSION OF ALCOHOL OFFENSE COMMITTED WHEN THE PERSON WAS LESS THAN TWENTY-ONE YEARS OLD EVEN THOUGH THE PERSON IS TWENTY-ONE YEARS OR OLDER AT THE TIME OF THE CONVICTION; TO REQUIRE STATE AND NATIONAL CRIMINAL RECORD CHECKS WHEN EXPUNGING RECORDS; AND TO PROVIDE THAT ANY PERSON OR ENTITY REQUIRED TO OBTAIN A CRIMINAL RECORD CHECK WOULD NOT BE DEEMED TO HAVE KNOWLEDGE OF OFFENSES EXPUNGED UNDER THE STATUTE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-145 reads as rewritten:

"**§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of ~~conviction~~ commission of misdemeanor; expunction of certain other misdemeanors.**

(a) Whenever any person who ~~has (i) not yet attained the age of 18 years~~ (i) committed a misdemeanor when the person was less than 18 years old and who has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) ~~not yet attained the age of 21 years~~ committed a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1) when the person was less than 21 years old and who has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), ~~he~~ the person may file a petition in the court where he or she was convicted for expunction of the misdemeanor from his or her criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that ~~he~~ the petitioner has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or

misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which ~~he~~ the petitioner lives and that his or her character and reputation are good.

(3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.

~~(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.~~

(4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him or her are outstanding.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against ~~him,~~him or her, and (i) petitioner was not 18 years old at the time of the ~~conviction~~ commission of the misdemeanor in question, or (ii) petitioner was not 21 years old at the time of the ~~conviction~~ commission of the offense of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he or she occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him or her for any purpose.

(c) The court shall also order that the said misdemeanor conviction, or a civil revocation of a drivers license as the result of a criminal charge, be expunged from the records of the court, and direct all law-enforcement agencies, including the Division of Motor Vehicles, bearing record of the same to expunge their records of the conviction or a civil revocation of a drivers license as the result of a criminal charge. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2.

The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

(c1) Any other applicable State or local government agency shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in ~~his~~ the clerk's county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge.

(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred twenty-five dollars ($125.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent.

(f) Notwithstanding any other provision of law, no person or entity required under State or federal law to obtain a criminal record check prior to employment shall be deemed to have knowledge of any offense expunged pursuant to this section."

SECTION 2. This act becomes effective December 1, 2009, and applies to petitions for expunctions filed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

MINUTES

July 1, 2010
Room 1027
Legislative Building
10 a.m.

Welcome and Attendance

The Senate Judiciary I Committee met Tuesday, June 29, 2010 in Room 1027 of the Legislative Building. Committee Chairman Martin Nesbitt presided, calling the meeting to order at 10:05 a.m.

In attendance with Chairman Nesbitt were Committee Vice Chairman Dan Clodfelter and Vice Chairman Josh Stein. Also present were members Senator Charlie Albertson, Senator Phil Berger, Senator Andrew Brock, Senator Harry Brown, Senator Margaret Dickson, Senator Malcolm Graham, Senator David Hoyle, Senator Clark Jenkins, Senator Ellie Kinnaird, Senator Floyd McKissick, Senator David Rouzer, Senator Richard Stevens and Senator Jerry Tillman. Staff present was Committee Counsel Erika Churchill, Giles Perry, Bill Patterson Susan Sitze, and Committee Assistant Jessica Kozma Proctor.

House Bill 1412

Chairman Nesbitt called House Bill 1412, "Courts Martial Amendments" as the Committee's first order of business. A Proposed Committee Substitute was distributed to members. The PCS was adopted for discussion by unanimous vote after a motion to adopt by Senator Hoyle. With little discussion Senator Tillman moved for favorable report, unfavorable as to original bill. The motion carried by unanimous vote.

A copy of this PCS may be found at http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H1412v1.pdf

House Bill 614

Chairman Nesbitt called House Bill 614, entitled "Absentee Voting Improvements." A PCS was distributed to member and moved for adoption by Senator Brunstetter. The motion carried unanimously. Chairman Nesbitt called for

discussion among members. Hearing no discussion, Senator Jenkins motioned for favorable report, unfavorable as to original bill. The motion carried unanimously.

A copy of the distributed PCS may be found at http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H614v2.pdf

House Bill 726

House Bill 726, "Clarify Expunctions," was the Committee's third order of business. The long title reads as follows: "An act to provide that a person's record may be expunged for a first misdemeanor offense committed when the person was less than eighteen years old even though the person is eighteen years or older at the time of the conviction; to provide that a person's record may be expunged for a first misdemeanor possession of alcohol offense committed when the person was less than twenty-one years old even though the person is twenty-one years or older at the time of the conviction; to require state and national criminal record checks when required to obtain a criminal record check would not be deemed to have knowledge of offenses expunged under the statute."

A PCS distributed to membership was adopted for discussion by a motion by Senator Tillman. Representative Spear and Representative Moore were present to speak to the bill. With minimal discussion, Senator McKissick moved for favorable report, unfavorable as to the original bill. The motion carried unanimously.

A copy of this PCS may be found at: http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H726v2.pdf

House Bill 666

Chairman Nesbitt called on the Committee to discuss House Bill 666, "Clarify Status of DWI Treatment Courts: an act to clarify that DWI treatment courts are a type of drug treatment court under the drug treatment court act."

Senator Albertson moved for adoption of a PCS of the Bill distributed to members. The motion carried unanimously. With no discussion, Senator Tillman moved for favorable report. The motion carried unanimously.

A copy of the PCS relevant to the day's meeting may be found at: http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H666v1.pdf

House Bill 748

Chairman Nesbitt told the Committee that House Bill 748 would be added to the day's discussion. The bill is: "Electioneering at Early Voting Sites: An act to forbid county boards of elections from designating three early voting sites in non-public buildings that do not allow four electioneering, except that electioneering may be restricted to five or more locations on the property."

A PCS of the Bill was distributed to members. Vice Chairman Clodfelter moved to adopt the PCS for discussion. The motion carried unanimously. A copy of the PCS relevant to the day's meeting may be found at http://www.ncleg.net/Sessions/2009/Bills/House/PDF/H748v1.pdf

Noting that no action would be taken on the Bill at the day's meeting, Chairman Nesbitt recognized Vice Chairman Clodfelter to explain the bill. The Vice Chairman thanked Chairman Nesbitt and began speaking by recognizing Bill Sponsor Representative Ross and noting the highly technical nature of the Bill.

Senator Martin Nesbitt, Jr.
Chairman

Jessica Kozma Proctor
Committee Assistant

AGENDA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

SENATOR MARTIN L. NESBITT, CHAIRMAN
Senator Pete Brunstetter, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman
Senator Josh Stein, Vice Chairman

Thursday, July 1, 2010
10 a.m.
Room 1027

1. Call Meeting to Order.

2. Recognize members, staff, and guests.

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
HB 748	Electioneering at Early Voting Sites.	Representative Ross Representative Weiss Representative Dollar Representative Stam
HB 789	File *Lis Pendens* for Certain Erosion Actions.	Representative Michaux, Jr. Representative Hall Representative Luebke Representative Wilkins, Jr.
HB 961	Gov't Ethics and Campaign Reform Act of 2010.	Representative Ross Representative Goodwin Representative Stam Representative Glazier
HB 1703	Adult Day Care Criminal Record Check Process.	Representative England, M.D. Representative Pierce Representative Farmer-Butterfield Representative Weiss
SB 1383	Safer Streets/DNA Initiatives.	Senator Clodfelter

ADJOURNMENT.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 789*
PROPOSED SENATE COMMITTEE SUBSTITUTE H789-CSST-96 [v.1]

6/22/2010 7:35:44 PM

Short Title: Enhance Protection of Victims & Witnesses. (Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO CREATE ENHANCED PROTECTIONS FOR VICTIMS AND WITNESSES BY INCREASING THE CRIMINAL PENALTY FOR THE OFFENSE OF INTIMIDATING OR INTERFERING WITH A WITNESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-226(a) reads as rewritten:

"(a) If any person shall by threats, menaces or in any other manner intimidate or attempt to intimidate any person who is summoned or acting as a witness in any of the courts of this State, or prevent or deter, or attempt to prevent or deter any person summoned or acting as such witness from attendance upon such court, ~~he~~ the person shall be guilty of a ~~Class H felony.~~ Class C felony."

SECTION 2. This act becomes effective December 1, 2010, and applies to offenses committed on or after that date.

HOUSE BILL 789:
Enhance Protection of Victims & Witnesses

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 30, 2010
Introduced by:	Reps. Hall, Luebke, Michaux, Wilkins	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to First Edition H789-CSST-96		

SUMMARY: ***The Proposed Committee Substitute for House Bill 789[1] would increase the criminal penalty for intimidating or interfering with a witness from a Class H felony to a Class C felony.***

CURRENT LAW: Under current law, a person who intimidates or interferes with a witness in any of the courts of this State is guilty of a Class H felony, punishable by community punishment, intermediate punishment, or an active sentence in the presumptive range of 5-6 months at the lowest prior record level.

BILL ANALYSIS: The PCS for House Bill 789 would increase the criminal penalty for this offense to a Class C felony, punishable by an active sentence in the presumptive range of 58-73 months at the lowest prior record level.

EFFECTIVE DATE: This act becomes effective December 1, 2009, and applies to offenses committed on or after that date.

H789-SMTG-98(CSST-96) v3

[1] As originally introduced, House Bill 789 was the companion bill to Senate Bill 586, File Lis Pendens for Certain Erosion Actions, which was enacted as Session Law 2009-269.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H 5

HOUSE BILL 961

Committee Substitute Favorable 4/15/09
Committee Substitute #2 Favorable 5/12/09
Senate Judiciary I Committee Substitute Adopted 6/22/10
Senate Finance Committee Substitute Adopted 6/22/10

Short Title: Gov't Ethics and Campaign Reform Act of 2010. (Public)

Sponsors:

Referred to:

April 1, 2009

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN PUBLIC CONFIDENCE IN THE ELECTION PROCESS FOR COUNCIL OF STATE OFFICES THAT REGULATE INDIVIDUALS AND BUSINESSES IN THIS STATE; TO PROVIDE LIMITS ON THE TRADING OF INFLUENCE OR POSITION FOR GAIN; TO INCREASE THE PUNISHMENT FOR MAKING CAMPAIGN CONTRIBUTIONS IN THE NAME OF ANOTHER; TO INCREASE ACCESSIBILITY TO INFORMATION RELATED TO CANDIDATE CAMPAIGN COMMITTEES; TO STRENGTHEN PUBLIC CONFIDENCE IN GOVERNMENT BY INCREASING THE REVOLVING DOOR PERIOD AND APPLICABILITY; TO STRENGTHEN TRANSPARENCY OF GOVERNMENT THROUGH ADDITIONAL DISCLOSURES BY PUBLIC SERVANTS; TO INCREASE ACCOUNTABILITY OF PUBLIC SERVANTS, APPOINTEES OF THE GOVERNOR, AND STATE EMPLOYEES BY PERMITTING THE GOVERNOR TO ADOPT MINIMUM STANDARDS OF ETHICAL CONDUCT; TO STRENGTHEN TRANSPARENCY OF GOVERNMENT THROUGH INCREASING ACCESSIBILITY TO PUBLIC RECORDS; TO MAKE TECHNICAL CHANGES; AND TO MAKE OTHER CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 22J of Chapter 163 of the General Statutes reads as rewritten:

"Article 22J.

"The Voter-Owned Elections Act.

"§ 163-278.95. Purpose and establishment of Voter-Owned Elections Act.

The purpose of this Article is to ensure the vitality and fairness of democratic elections for elected offices that implement and provide oversight on the regulation or investigation of individuals, businesses, or government in North Carolina to the end that any eligible citizen of this State can realistically choose to seek and run for that public office. It is also the purpose of this Article to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent in North Carolina to influence the outcome of elections. It is essential to the public interest that the potential for corruption or the appearance of corruption within regulatory or investigatory offices overseen by elected officials is minimized and that the equal and meaningful participation of all citizens in the democratic process is ensured. Accordingly, this Article establishes the North Carolina Voter-Owned Elections Fund as an alternative source of campaign financing for candidates

who obtain a sufficient number of qualifying contributions from registered voters and who voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for the Council of State offices of Auditor, Superintendent of Public Instruction, and Commissioner of Insurance in elections to be held in 2008 and ~~thereafter.~~ thereafter; to candidates for the Council of State offices of Secretary of State and Treasurer, and to candidates for the offices of Commissioner of Agriculture and Commissioner of Labor, in elections to be held in 2012 and thereafter; and to candidates for the Council of State office of Attorney General in elections to be held in 2016 and thereafter.

"§ 163-278.96. Definitions.

The following definitions apply in this Article:

(1) Board. – The State Board of Elections.

(2) Campaign-related expenditure. – An expenditure that benefits the candidate's current campaign in accordance with guidelines established by the Board.

(3) Candidate. – An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a "candidate campaign committee" as defined in G.S. 163-278.38Z(3).

(4) Certified candidate. – A candidate for office who chooses to receive campaign funds from the Fund and who is certified under G.S. 163-278.98(c). A write-in candidate authorized under G.S. 163-123 is not eligible to become a certified candidate.

(5) Contested primary and contested general election. – An election in which there are more candidates than the number to be elected.

(6) Contribution. – Defined in G.S. 163-278.6. A distribution from the Fund pursuant to this Article is not a "contribution" and is not subject to the limitations of G.S. 163-278.13 or the prohibitions of G.S. 163-278.15 or G.S. 163-278.19. Instead of being subject to G.S. 163-278.16B, distributions are subject to the guidelines issued by the Board pursuant to G.S. 163-278.98(e)(5).

(6a) Electioneering communication. – As defined in G.S. 163-278.80 and G.S. 163-278.90, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day.

(7) Expenditure. – Defined in G.S. 163-278.6.

(8) Fund. – The North Carolina Voter-Owned Elections Fund established in G.S. 163-278.97.

(9) Independent expenditure. – Defined in G.S. 163-278.6.

(10) Maximum qualifying contributions. – If the candidate has ~~an uncontested~~ no primary, an amount equal to ~~100~~one hundred dollars ($100.00) times the ~~filing fee~~ minimum number of registered voters required to make a qualifying contribution under G.S. 163-278.98(b) for the office sought. If the candidate has a contested primary, ~~200~~ two hundred dollars ($200.00) times the ~~filing fee~~ minimum number of registered voters required to make a qualifying contribution under G.S. 163-278.98(b) for the office sought.

(11) Nonparticipating candidate. – A candidate for office who is not seeking to be certified under G.S. 163-278.98(c).

(12) Office. – The Council of State offices of Auditor, Secretary of State, Superintendent of Public Instruction, Treasurer, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

(13) Participating candidate. – A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.98(a).

(14) Political committee. – Defined in G.S. 163-278.6.

(15) Qualifying contribution. – A contribution of not less than ten dollars ($10.00) and not more than two hundred dollars ($200.00) in the form ~~of a check or money order~~ prescribed for noncash monetary contributions in G.S. 163-278.14(b) to the candidate that meets both of the following conditions:

a. Made by ~~any~~ an individual who is a registered voter in this ~~State.~~State at the time of the submittal of the report specified in G.S. 163-278.98(c).

b. Made only during the qualifying period and obtained with the approval of the candidate or candidate's committee.

(16) Qualifying period. – The period beginning September 1 in the year before the election and ending on the day of the primary.

(17) Trigger for matching funds. – The dollar amount at which matching funds are released under G.S. 163-278.99B for certified candidates. In the case of a contested primary, the trigger equals the maximum qualifying contributions for the candidate. In the case of a contested general election, the trigger equals the base level of funding available under G.S. 163-278.99(b)(4).

"§ 163-278.97. Voter-Owned Elections Fund established; sources of funding.

(a) Establishment of Fund. – The North Carolina Voter-Owned Elections Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

(b) Sources of Funding. – Money received from all the following sources must be deposited in the Fund:

(1) Unspent Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.

(2) Money ordered returned to the Fund in accordance with G.S. 163-278.99D.

(3) Money paid to the Fund equal to excess contributions as provided in G.S. 163-278.98(e)(1).

(4) Voluntary donations made directly to the Fund.

(5) Appropriations from the General Fund.

(6) Money collected pursuant to G.S. 55A-1-22, 57C-1-22, 58-33-125, 78A-37, 95-110.5(20), 95-69.11(11), 106-22, and 147-69.2(e).

(c) Evaluation and Determination of Fund Amount. – By January 1, 2011, and every four years thereafter, the Board, in conjunction with the Advisory Council established under G.S. 163-278.68(b), shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund during the next election cycle ~~and make recommendations about the feasibility of expanding its provisions to include other candidates for State office~~ based on the experience of this Article and the experience of similar programs in North Carolina and other states. The Board shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates but is not reached by regulation.

"§ 163-278.98. Requirements for participation.

(a) Declaration of Intent to Participate. – Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the

program established by this Article as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, campaign-related expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (e) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. – In order to be certified, participating candidates must obtain qualifying contributions from at least ~~750~~ 900 registered voters in this ~~State.~~ State, and from an additional 100 registered voters in this State for each one hundred thousand dollars ($100,000) that the grant amount for the office under G.S. 163-278.99(b)(4) exceeds three hundred thousand dollars ($300,000). Multiple contributions from the same individual to the same candidate shall not count as more than one qualifying contribution.

The qualifying contributions shall be equal to at least ~~25~~ twenty dollars ($20.00) times the ~~amount of the filing fee for the office.~~ minimum number of qualifying contributions but shall not exceed the maximum qualifying contributions defined in G.S. 163-278.96(10). No payment, gift, ~~or~~ anything of ~~value~~ value, or the opportunity to win anything of value shall be given in exchange for a qualifying contribution.

(c) Certification of Candidates. – Upon receipt of a submittal of the record of qualifying contributions by a participating candidate, the Board shall determine whether or not the candidate has:

(1) Filed a completed declaration of intent to participate in this Article.
(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.
(3) Filed a notice of candidacy with the State Board of Elections as a candidate for the office.
(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of qualifying contributions.

(d) Final Report for Qualifying Contributions. – No later than five business days after the end of the qualifying period, all participating candidates shall submit a report to the Board of all previously unreported qualifying contributions, in accordance with procedures developed by the Board. Within seven business days after submittal of the final report, the Board shall determine, through a random audit or other means it adopts, whether the contributions abide by the definition of qualifying contributions, whether they must be returned to the donor, and whether they exceed the maximum amount of qualifying contributions.

(e) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. – The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning August 1 of the year before the election and before filing a declaration of intent, a candidate shall limit campaign-related expenditures to twenty thousand dollars ($20,000) and shall not accept more than twenty thousand dollars ($20,000) from sources and in amounts permitted by Article 22A of this Chapter. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Fund. However, the acceptance of contributions in excess of that twenty thousand dollar ($20,000) limit does not render the candidate ineligible if the

candidate pays to the Board an amount equal to the contributions accepted by the candidate in excess of that limit. The Board shall deposit all such payments into the Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate may accept only qualifying contributions, contributions under ten dollars ($10.00) from North Carolina voters, in-kind party contributions as permitted in subdivision (4) of this subsection, and personal and family contributions permitted under subdivision (4a) of this subsection. The total contributions the candidate may accept during this period shall not exceed the maximum qualifying contributions for that candidate. Except for personal and family contributions permitted under subdivision (4a) of this subsection, multiple contributions from the same contributor to the same candidate shall not exceed two hundred dollars ($200.00). In addition to these contributions, the candidate may only expend during this period the remaining money raised pursuant to subdivision (1) of this subsection and possible matching funds received pursuant to G.S. 163-278.99B. If the candidate has any remaining money that was raised as contributions before August 1 of the year before the election, the candidate may not expend that money after filing the declaration of intent, except for purposes permitted under subdivision (2), (3), (6), (7), or (8) of G.S. 163-278.16B(a).

(3) After the qualifying period and through the date of the general election, the candidate shall cease campaign-related fund-raising activities and shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.99(b) plus any funds remaining from the qualifying period and possible matching funds.

(4) In addition to the amounts above, a candidate may accept in-kind contributions from political party executive committees, up to an aggregate value of thirty thousand dollars ($30,000) for the election cycle.

(4a) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign. Debt incurred by the candidate for a campaign expenditure shall count toward that limit. The candidate may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister. Up to two hundred dollars ($200.00) of a contribution from the candidate's family member may be treated as a qualifying contribution if it meets the requirements of G.S. 163-278.96(15)a. and b.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures.

(6) Except as provided in subdivision (1) of this subsection, any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.99D. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election or at the time the individual ceases to be a certified candidate, whichever occurs first. For

accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(f) Revocation. – A candidate may revoke, in writing to the Board, a decision to participate in the Fund at any time. After a revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund.

"§ 163-278.99. Distribution from the Fund.

(a) Timing of Fund Distribution. – The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section as follows:

(1) One-third of the amount within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(2) The remainder of the amount on August 1 before the general election.

(b) Amount of Fund Distribution. – ~~By August 1, 2011, and no less frequently than every four years thereafter,~~ No later than August 1 of the second year before an election, the Board shall determine the amount of ~~funds, rounded to the nearest one hundred dollars ($100.00),~~ funds to be distributed to certified candidates as follows:

(1) ~~Uncontested primaries.~~ No primary. – No funds shall be distributed.

(2) Contested primaries. – No funds shall be distributed except as provided in G.S. 163-278.99B.

(3) Uncontested general elections. – No funds shall be distributed.

(4) Contested general elections. – The amount of funds to be distributed to a candidate is the average amount of campaign-related expenditures made in the general election by all candidates who won the immediately preceding three general elections for that office, rounded to the nearest one thousand dollars ($1,000), but not less than three hundred thousand dollars ($300,000). For purposes of this subsection, "campaign-related expenditures" does not include loan repayments and contributions to a candidate, political committee, or political party. For purposes of this subsection, expenditures are made in the general election if they are required to be reported on the third and fourth quarterly reports.

(c) Method of Fund Distribution. – The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding, and the candidate may raise additional money in the same manner as a nonparticipating candidate for the same office up to the unfunded amount of the candidate's eligible funding.

"§ 163-278.99A. Reporting requirements.

(a) Reporting by Noncertified Candidates and Other Entities. – Any nonparticipating candidate with a certified opponent shall report total contributions received to the Board by facsimile machine or electronically within 24 hours after the total amount of contributions received exceeds eighty percent (80%) of the trigger for matching funds as defined in G.S. 163-278.96(17). Any entity making independent expenditures in support of or in opposition to a certified candidate, or in support of a candidate opposing a certified candidate, or paying for electioneering communications referring to one of those candidates, shall report the total funds received, spent, or obligated for those expenditures or payments to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent

expenditures or electioneering communications exceeds five thousand dollars ($5,000). After the initial 24-hour filing, the nonparticipating candidate or other reporting entity shall comply with an expedited reporting schedule. The schedule and forms for reports required by this subsection shall be supplied by the Board.

(b) Reporting by Participating and Certified Candidates. – Notwithstanding other provisions of law, participating and certified candidates shall report any money received and all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. Upon the filing of a final report for any losing primary election, special election, or general election, each candidate who has revenues from the Fund remaining unspent shall return those revenues to the Board. In developing these procedures, the Board shall utilize existing campaign reporting procedures wherever practicable.

(c) Timely Access to Reports. – The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information.

"§ 163-278.99B. Matching funds.

(a) When Matching Funds Become Available. – When any report or group of reports shows that "funds in opposition to a certified candidate or in support of an opponent to that candidate" as described in this section exceed the trigger for matching funds as defined in G.S. 163-278.96(17), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. "Funds in opposition to a certified candidate or in support of an opponent to that candidate" shall be equal to the sum of subdivisions (1) and (2) as follows:

(1) The greater of the following:

a. Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one nonparticipating opponent of a certified candidate. Where a certified candidate has more than one nonparticipating opponent, the measure shall be taken from the nonparticipating candidate showing the highest relevant dollar amount.

b. The funds distributed in accordance with G.S. 163-278.99(b) to a certified opponent of the certified candidate.

(2) The aggregate total of all expenditures and payments reported in accordance with G.S. 163-278.99A(a) of entities making independent expenditures or electioneering communications in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Matching Funds ~~in Contested Primary.~~ Before Date of Primary. – Total matching funds to a certified candidate ~~in a contested~~ before the date of the primary shall be limited to an amount equal to the maximum qualifying contributions for a candidate with a contested primary. Matching funds are available to a certified candidate with an opponent in the primary or to a certified candidate who is clearly referred to in expenditures reportable under G.S. 163-278.99A made in opposition to that candidate.

(c) Limit on Matching Funds in Contested General Election. – Total matching funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163-278.99(b)(4).

(d) Determinations by Board. – In the case of electioneering communications, the Board shall determine which candidate, if any, is entitled to receive matching funds as a result of the communication. The Board shall issue matching funds based on the communication only if it ascertains that the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. In making its determination, the Board shall not consider evidence external to the communication itself of the intent of the sponsor or the effect of the communication. The Board shall notify each candidate it determines is entitled

to receive matching funds based on those communications, the sponsor of those communications, and any candidate who is an opponent of the candidate it determines is entitled to the matching funds. The Board shall give the sponsor of the communication and any opposing candidate an adequate opportunity to rebut the determination of the Board. In considering the rebuttal, all candidates in the race and the sponsor shall be given adequate and equal opportunity to be heard. The Board shall adopt procedures for implementing this subsection, balancing in those procedures adequacy of opportunity to rebut and adequacy and equality of opportunity to be heard on the rebuttal with the need to expedite the decision on awarding matching funds. The Board shall distribute the matching funds, if any, at the conclusion of its process.

(e) Proportional Measuring of Multicandidate Communications. – In calculating the amount of matching funds a certified candidate is eligible to receive under this section, the Board shall include the proportion of expenditures, obligations, or payments for multicandidate communications that pertains to the candidate.

(f) No Matching Funds for Communications Supporting or Opposing All Candidates. – No matching funds are available under this section as a result of an expenditure that supports all candidates for the same office or opposes all candidates for the same office. No matching funds are available under this section as a result of an electioneering communication that the Board ascertains is susceptible of no reasonable interpretation other than as an appeal to vote for all candidates for the same office or to vote against all candidates for the same office.

"**§ 163-278.99C. Unaffiliated and new-party candidates.**

Unaffiliated candidates certified pursuant to G.S. 163-122 and new-party candidates certified pursuant to G.S. 163-98 shall be eligible for revenues from the Fund in the same amounts and at the same time as specified in G.S. 163-278.99. For unaffiliated candidates and new-party candidates not certified to appear on the ballot by noon on the deadline set in G.S. 163-106(c) for candidate filing in the election year, the deadline for seeking certification to receive revenue from the Fund is noon on the first business day of July of the election year.

"**§ 163-278.99D. Enforcement by the Board; civil penalty.**

In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation or three times the amount of any financial transactions involved in the violation, whichever is greater. In addition to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the Board makes a determination that a violation of this Article has occurred, the Board shall calculate and assess the amount of the civil penalty and shall notify the entity that is assessed the civil penalty of the amount that has been assessed. The Board shall then proceed in the manner prescribed in G.S. 163-278.34. In determining whether or not a candidate is in violation of this Article, the Board may consider as a mitigating factor any circumstances out of the candidate's control.

"**§ 163-278.99D.1. Enforcement and administration.**

(a) Enforcement by the Board. – The Board, with the advice of the Advisory Council for the Public Campaign Fund established by G.S. 163-278.68, shall administer the provisions of this Article.

(b) Appeals. – The initial decision on an issue concerning qualification, certification, or distribution of funds under this Article shall be made by the Executive Director of the Board. The procedure for challenging that decision is as follows:

(1) An individual or entity aggrieved by a decision by the Executive Director of the Board may appeal to the full Board within three business days of the decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five business days after an appeal is properly made, and after due notice is given to the parties, the Board shall hold a hearing. The appellant has the burden of providing clear and convincing evidence to demonstrate that the decision of the Executive Director was improper. The Board shall rule on the appeal within three business days after the completion of the hearing.

(c) Board to Adopt Procedures and Issue Opinions. – The Board shall adopt procedures and issue opinions to ensure effective administration of this Article. Such procedures and opinions shall include, but not be limited to, procedures for obtaining qualifying contributions, certification of candidates, addressing circumstances involving special elections, vacancies, recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance with this Article. The Board shall adopt procedures for the distribution of matching money that further the purpose and avoid the subversion of G.S. 163-278.99B. For races involving special elections, recounts, vacancies, withdrawals, or replacement candidates, the Board shall establish procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues. Where applicable, the Board shall adopt the provisions of G.S. 163-278.64A. The Board shall fulfill each of these duties in consultation with the Advisory Council on the Public Campaign Fund.

(d) Report to the Public. – The Advisory Council for the Public Campaign Fund shall issue a report by March 1, 2013, and every two years thereafter that evaluates and makes recommendations about the implementation of this Article based on the experience of the Fund and the experience of similar programs in other states. The Advisory Council shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates receiving money from the Fund but that does not meet the definition of "independent expenditures."

"**§ 163-278.99E. Voter education.**

(a) Voter Guide. – The Board shall publish a Voter Guide that explains the functions of ~~office as defined in G.S. 163-278.96(12) and the laws concerning the election~~ all 10 offices of the Council of State, the purpose and function of the Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The State Board of Elections shall maintain a list of the addresses from which mailed Voter Guides are returned as undeliverable. That list shall be available for public inspection. The distribution shall occur no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the primary and no more than 28 days nor fewer than seven days before the one-stop voting period provided in G.S. 163-227.2 for the general election.

(b) Candidate Information. – The Voter Guide shall include information concerning all candidates for ~~office as defined in G.S. 163-278.96(12),~~ all 10 of the offices of the Council of State, as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

(1) Place of residence.
(2) Education.
(3) Occupation.
(4) Employer.
(5) Previous elective offices held.
(6) ~~Endorsements, limited to 50 words.~~ Endorsements. – Concerning endorsements, the Board shall send to the candidates instructions as follows: "In order to have an endorsement published, you must provide written

confirmation to the Board from the endorsing person or organization that you received that person's or organization's endorsement."

(7) Candidate ~~statement, limited to 150 words.~~ Statement. – Concerning that statement, the Board shall send to the candidates instructions as follows: "Your statement may include information such as your qualifications, your endorsements, why you would make a good elected official, what distinguishes you from your opponent(s), and any other information relevant to your candidacy. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language. The candidate shall have three days to resubmit the candidate statement if the Board rejects a portion of the statement."

The entire entry for a candidate shall be limited to 250 words.

(c) Disclaimer. – The Voter Guide shall contain the following statement: "Statements by candidates do not express or reflect the opinions of the State Board of Elections."

(d) Relationship to the Judicial Voter Guide. – ~~The Board may~~ Whenever possible, the Board shall publish the Voter Guide in conjunction with the Judicial Voter Guide described in G.S. 163-278.69."

SECTION 1.(b) G.S. 55A-1-22 reads as rewritten:

"§ 55A-1-22. Filing, service, and copying fees.

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

	Document	Fee
(1)	Articles of incorporation	~~$60.00~~$65.00
(2)	Application for reserved name	$10.00
(3)	Notice of transfer of reserved name	$10.00
(4)	Application for registered name	$10.00
(5)	Application for renewal of registered name	$10.00
(6)	Corporation's statement of change of registered agent or registered office or both	$ 5.00
(7)	Agent's statement of change of registered office for each affected corporation	$ 5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	$ 5.00
(10)	Amendment of articles of incorporation	$25.00
(11)	Restated articles of incorporation without amendment of articles	$10.00
(12)	Restated articles of incorporation with amendment of articles	$25.00
(13)	Articles of merger	$25.00
(14)	Articles of dissolution	$15.00
(15)	Articles of revocation of dissolution	$10.00
(16)	Certificate of administrative dissolution	No fee
(17)	Application for reinstatement following administrative dissolution	$100.00
(18)	Certificate of reinstatement	No fee
(19)	Certificate of judicial dissolution	No fee
(20)	Application for certificate of authority	$125.00
(21)	Application for amended certificate of authority	$25.00
(22)	Application for certificate of withdrawal	$10.00
(23)	Certificate of revocation of authority to conduct affairs	No fee
(24)	Corporation's Statement of Change of Principal Office	$ 5.00
(24a)	Designation of Principal Office Address	$ 5.00

(25)	Articles of correction	$10.00
(26)	Application for certificate of existence or authorization (paper)	$15.00
(26a)	Application for certificate of existence or authorization (electronic)	$10.00
(27)	Any other document required or permitted to be filed by this Chapter	$10.00
(28)	Repealed by Session Laws 2001-358, s. 7(c), effective January 1, 2002.	

(a1) Of the fee charged pursuant to subdivision (a)(1) of this section, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original.

(2) Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate."

SECTION 1.(c) G.S. 57C-1-22 reads as rewritten:

"**§ 57C-1-22. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

	Document	Fee
(1)	Articles of organization	~~$125.00~~$130.00
(2)	Application for reserved name	10.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Limited liability company's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected limited liability company	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of organization	50.00
(11)	Restated articles of organization without amendment of articles	10.00
(12)	Restated articles of organization with amendment of articles	50.00
(12a)	Articles of conversion (other than articles of conversion included as part of another document)	50.00
(13)	Articles of merger	50.00
(14)	Articles of dissolution	30.00
(15)	Cancellation of articles of dissolution	10.00
(16)	Certificate of administrative dissolution	No fee
(16a)	Application for reinstatement following administrative dissolution	100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	250.00
(20)	Application for amended certificate of authority	50.00
(21)	Application for certificate of withdrawal	10.00
(22)	Certificate of revocation of authority to transact business	No fee

(23)	Articles of correction	10.00
(24)	Application for certificate of existence or authorization (paper)	15.00
(24a)	Application for certificate of existence or authorization (electronic)	10.00
(25)	Annual report	~~200.00~~205.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00
(27)	Repealed by Session Laws 2001-358, s. 8(c).	

(a1) Of the fee charged pursuant to subdivision (a)(1) of this section, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes.

(b) The Secretary of State shall collect a fee of ten dollars ($10.00) each time process is served on the Secretary of State under this Chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited liability company:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate."

SECTION 1.(d) G.S. 58-33-125(c) reads as rewritten:

"(c) Any person who is not licensed and who is required by law or administrative rule to secure a license shall, upon application for licensing, pay to the Commissioner a fee of ~~fifty dollars ($50.00).~~ fifty-five dollars ($55.00). If additional licensing for other kinds of insurance is requested, a fee of ~~fifty dollars ($50.00)~~ fifty-five dollars ($55.00) shall be paid to the Commissioner upon application for licensing for each additional kind of insurance. Of the fifty-five dollar ($55.00) fee charged, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes.

In addition to the fees prescribed by this subsection, any person applying for a supplemental license to sell Medicare supplement and long-term care insurance policies shall pay an additional fee of fifty dollars ($50.00) upon application for licensing for those kinds of insurance."

SECTION 1.(e) G.S. 78A-37(b) reads as rewritten:

"(b) Every applicant for initial or renewal registration shall pay a filing fee of ~~three hundred dollars ($300.00)~~ three hundred five dollars ($305.00) in the case of a dealer and ~~one hundred twenty-five dollars ($125.00)~~ one hundred thirty dollars ($130.00) in the case of a salesman. The Administrator may by rule reduce the registration fee proportionately when the registration will be in effect for less than a full year. Of a fee charged pursuant to this subsection, five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(f) G.S. 95-110.5(20) reads as rewritten:

"(20) To establish fees not to exceed two hundred dollars ($200.00) for the inspection and issuance of certificates of operation for all devices and equipment subject to this Article upon installation or alteration, for each follow-up inspection, and for annual periodic inspections thereafter. Of the fee charged pursuant to this subdivision, an additional five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(g) G.S. 95-69.11(11) reads as rewritten:

"(11) To establish reasonable fees for the inspection and issuance of inspection certificates for boilers and pressure vessels that are in use. Of any fee charged pursuant to this subdivision, an additional five dollars ($5.00) shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(h) G.S. 106-22 is amended by adding a new subdivision to read:

"(18) Rental agreements. – For every rental agreement for real property where the Board or the Commissioner is the lessor, the Board or Commissioner shall charge an additional three percent (3%), which shall be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(i) G.S. 147-69.2 is amended by adding a new subsection to read:

"(e) There shall be charged a fee of two one-hundredths of a percent (.02%) on each fund held by the Treasurer that consists of nontax revenue, excluding funds holding monies for pensions and retirement, escheats, general fund, federal funds, and bond proceeds, to be paid into the North Carolina Voter-Owned Elections Fund for distribution in accordance with Article 22J of Chapter 163 of the General Statutes."

SECTION 1.(j) For the period January 1, 2011, through December 31, 2012, two dollars and fifty cents ($2.50) of each three dollar ($3.00) allocation under G.S. 105-159.2 shall be transferred on a monthly basis to the North Carolina Voter-Owned Election Fund for distribution under Article 22J of Chapter 163 of the General Statutes in the 2012 election.

SECTION 1.(k) The State Board of Elections shall make the determination of available funds required by G.S. 163-278.99(b), as enacted by this section, on October 1, 2010, or within 30 days of receiving preclearance under section 5 of the Voting Rights Act of 1965, whichever date occurs first.

SECTION 1.(l) This section becomes effective October 1, 2010.

SECTION 2.(a) G.S. 163-278.96(12), as amended by Section 1 of this act, reads as rewritten:

"(12) Office. – The Council of State offices of Attorney General, Auditor, Secretary of State, Superintendent of Public Instruction, Treasurer, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance."

SECTION 2.(b) This section becomes effective July 1, 2015.

SECTION 3.(a) G.S. 126-14 reads as rewritten:

"**§ 126-14. Promise or threat to obtain political contribution or support.**

(a) It is unlawful for a State employee or a person appointed to State office, other than elective office or office on a board, commission, committee, or council whose function is advisory only, whether or not subject to the Personnel Act, to coerce:

(1) a State employee subject to the Personnel Act,
(2) a probationary State employee,
(3) a temporary State employee, or
(4) an applicant for a position subject to the Personnel Act

to support or contribute to a political candidate, political committee as defined in G.S. 163-278.6, or political party or to change the party designation of ~~his~~ the individual's voter registration by threatening that change in employment status or discipline or preferential personnel treatment will occur with regard to ~~a person~~ an individual listed in subdivisions (1) through (4).

(a1) It is unlawful for an individual as defined in G.S. 138A-3(30)a. to coerce a person as described in G.S. 138A-32(d)(1), (2), or (3) to support or contribute to a political candidate, a political committee as defined in G.S. 163-278.6, or a political party by threatening discipline

or promising preferential treatment with regard to that person's business with the individual's State office or that person's activities regulated by the individual's State office.

(b) Any person violating this section shall be guilty of a Class 2 misdemeanor.

(c) A State employee subject to the Personnel Act, probationary State employee, or temporary State employee who without probable cause falsely accuses a State employee or a person appointed to State office of violating this section shall be subject to discipline or change in employment status in accordance with the provisions of G.S. 126-35, 126-37, and 126-38 and may, as otherwise provided by law, be subject to criminal penalties for perjury or civil liability for libel, slander, or malicious prosecution."

SECTION 3.(b) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 4.(a) G.S. 14-234(a) reads as rewritten:

"**§ 14-234. Public officers or employees benefiting from public contracts; exceptions.**

(a) (1) No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.

(2) A public officer or employee who will derive a direct benefit from a contract with the public agency he or she serves, but who is not involved in making or administering the contract, shall not attempt to influence any other person who is involved in making or administering the contract.

(3) No public officer or employee may solicit or receive any gift, favor, reward, service, or promise of ~~reward~~ reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves."

SECTION 4.(b) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 5.(a) G.S. 120C-304(a) reads as rewritten:

"(a) No legislator or former legislator may register as a lobbyist under this ~~Chapter:~~Chapter

~~(1)~~ ~~While~~while in ~~office.~~office or

~~(2)~~ ~~Before the later of the close of session as set forth in G.S. 120C-100(a)(4)b.1 in which the legislator served or six months~~ within one year after leaving office."

SECTION 5.(b) G.S. 120C-304(b) reads as rewritten:

"(b) No public servant or former public servant as defined in G.S. 138A-3(30)a. may register as a lobbyist under this Chapter while in office or within ~~six months~~ one year after leaving office."

SECTION 5.(c) G.S. 120C-304(c) reads as rewritten:

"(c) No public servant or former public servant as defined in G.S. 138A-3(30)c. may register as a lobbyist under this Chapter within ~~six months~~ one year after separation from employment as a public servant. No other employee of any State agency may register as a lobbyist under this Chapter to lobby the State agency that previously employed the former employee within one year after voluntary separation or separation for cause from that State agency."

SECTION 5.(d) G.S. 120C-200 is amended by adding a new subsection to read:

"(f) In addition to the information required for registration under subsection (b) of this section, former employees of a State agency who register as a lobbyist within one year after voluntary separation or separation for cause from employment with a State agency shall also indicate which State agency with which the former employee was employed."

SECTION 5.(e) This section becomes effective October 1, 2010, and applies to individuals leaving office or employment on or after that date.

SECTION 6. G.S. 163-278.22(7) reads as rewritten:

"(7) To make investigations to the extent the Board deems necessary with respect to statements filed under the provisions of this Article and with respect to alleged failures to file any statement required under the provisions of this Article or Article 22M of the General Statutes and, upon complaint under oath by any registered voter, with respect to alleged violations of any part of this Article or Article 22M of the General Statutes. The Board has the authority to hire or contract with a special investigator, if needed, for this purpose."

SECTION 7.(a) G.S. 163-278.27 reads as rewritten:

"**§ 163-278.27. Criminal penalties; duty to report and prosecute.**

(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who intentionally violates the applicable provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.13, 163-278.13B, 163-278.14, 163-278.16, 163-278.16B, 163-278.17, 163-278.18, 163-278.19, 163-278.20, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D, 163-278.40E, or 163-278.40J is guilty of a Class 2 misdemeanor. The statute of limitations as stated in G.S. 15-1 shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred.

(a1) A violation of G.S. 163-278.32 by making a certification knowing the information to be untrue is a Class I felony.

(a2) A person or individual who intentionally violates G.S. 163-278.14(a) or G.S. 163-278.19(a) and the unlawful contributions total more than ten thousand dollars ($10,000) per election is guilty of a Class I felony.

(b) Whenever the Board has knowledge of or has reason to believe there has been a violation of any section of this Article, it shall report that fact, together with accompanying details, to the following prosecuting authorities:

(1) In the case of a candidate for nomination or election to the State Senate or State House of Representatives: report to the district attorney of the prosecutorial district in which the candidate for nomination or election resides;

(2) In the case of a candidate for nomination or election to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, State Superintendent of Public Instruction, State Attorney General, State Commissioner of Agriculture, State Commissioner of Labor, State Commissioner of Insurance, and all other State elective offices, Justice of the Supreme Court, Judge of the Court of Appeals, judge of a superior court, judge of a district court, and district attorney of the superior court: report to the district attorney of the prosecutorial district in which Wake County is located;

(3) In the case of an individual other than a candidate, including, without limitation, violations by members of political committees, referendum committees or treasurers: report to the district attorney of the prosecutorial district in which the individual resides; and

(4) In the case of a person or any group of individuals: report to the district attorney or district attorneys [of] the prosecutorial district or districts in which any of the officers, directors, agents, employees or members of the person or group reside.

(c) Upon receipt of such a report from the Board, the appropriate district attorney shall prosecute the individual or persons alleged to have violated a section or sections of this Article.

(d) As a condition of probation, a sentencing judge may order that the costs incurred by the State Board of Elections in investigating and aiding the prosecution of a case be paid to the State Board of Elections by the defendant on such terms and conditions as set by the judge."

SECTION 7.(b) G.S. 163-278.14(a) reads as rewritten:

"(a) No individual, political committee, or other entity shall make any contribution anonymously or in the name of another. No candidate, political committee, referendum committee, political party, or treasurer shall knowingly accept any contribution made by any individual or person in the name of another individual or person or made anonymously. If a candidate, political committee, referendum committee, political party, or treasurer receives anonymous contributions or contributions determined to have been made in the name of another, he shall pay the money over to the Board, by check, and all such moneys received by the Board shall be deposited in the Civil Penalty and Forfeiture Fund of the State of North Carolina. This subsection shall not apply to any contribution by an individual with the lawful authority to act on behalf of another individual, whether through power of attorney, trustee, or other lawful authority."

SECTION 7.(c) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 8. In order to foster and facilitate transparency of information relating to political campaigns, the State Board of Elections shall create an easily searchable database to provide any member of the public with access to the database to search by geographic location, occupation, employer, contributor, or contributee, within an election cycle and over a period of time as specified by the searcher.

SECTION 9. Article 2 of Chapter 143C of the General Statutes is amended to add new sections to read:

"**§ 143C-2-5. Grants and contracts database.**

(a) The Director of the Budget shall require the Office of State Budget and Management, with the support of Information Technology Services, to build and maintain a database and Web site for providing a single, searchable Web site on State spending for grants and contracts.

(b) Heads of the principal departments as listed in G.S. 143B-6 shall monthly conduct a review of all State contracts and grants administered by the principal department.

(c) All State institutions, departments, bureaus, agencies, or commissions subject to the authority of the Director of the Budget that maintain a Web site shall be required to include an access link to the NC OpenBook Web site on the home page of the agency Web site. Each agency shall also prominently display a search engine on the agency Web site home page to allow for ease of searching for information, including contracts and grants, on the agency's Web site.

"**§ 143C-2-6. Contents of database and Web site.**

(a) The Office of State Controller, the Department of Administration, and Information Technology Services shall provide the Office of State Budget and Management with the statewide information on State contracts necessary for the development and maintenance of the database and Web site required by this Article, with the information updated at least every 30 days.

(b) The Office of State Budget and Management shall work with the Office of the State Auditor and the Grant Information Center to incorporate data on grants into the database and Web site required by this Article. All State institutions, departments, bureaus, agencies, or commissions subject to the authority of the Governor shall make necessary changes to existing reporting processes for grants and contracts to ensure the goals of this Article are met.

(c) All State contracts and grants awarded in amounts in excess of ten thousand dollars ($10,000) shall be included in the database and Web site required by this Article. The following information shall be provided for each contract or grant:

(1) The name of the entity receiving the award.
(2) The amount of the award or estimated award.
(3) Information on the award, including transaction type, funding agency, duration of contract, or grant award.
(4) The location of the entity receiving the award.
(5) Background information on the entity receiving the award.
(6) Time lines for anticipated completion of the work required.
(7) Expected outcomes of the contract or grant and specific deliverables required.
(8) Contact information for the responsible State government officer or administrator of the contract or grant."

SECTION 10. G.S. 138A-3(30) reads as rewritten:

"(30) Public servants. – All of the following:

a. Constitutional officers of the State and individuals elected or appointed as constitutional officers of the State prior to taking office.
b. Employees of the Office of the Governor.
c. Heads of all principal State departments, as set forth in G.S. 143B-6, who are appointed by the Governor.
d. The chief deputy and chief administrative assistant of each individual designated under sub-subdivision a. or c. of this subdivision.
e. Confidential assistants and secretaries as defined in G.S. 126-5(c)(2), to individuals designated under sub-subdivision a., c., or d. of this subdivision.
f. Employees in exempt positions designated in accordance with G.S. 126-5(d)(1), (2), or (2a) and confidential secretaries to these individuals.
g. Any other employees or appointees in the principal State departments as may be designated by the Governor to the extent that the designation does not conflict with the State Personnel Act.
h. Judicial employees.
i. All voting members of boards, including ex officio members, permanent designees of any voting member, and members serving by executive, legislative, or judicial branch appointment.
j. For The University of North Carolina, the voting members of the Board of Governors of The University of North Carolina, the president, the vice-presidents, and the chancellors, the vice-chancellors, and voting members of the boards of trustees of the constituent institutions.
k. For the Community College System, the voting members of the State Board of Community Colleges, the President and the chief financial officer of the Community College System, the president, chief financial officer, and chief administrative officer of each community college, and voting members of the boards of trustees of each community college.
l. Members of the ~~Commission.~~Commission, the executive director, and the assistant executive director of the Commission.
m. Individuals under contract with the State working in or against a position included under this subdivision.
n. The director of the Office of State Personnel.
o. The State Controller.

p. The chief information officer, deputy chief information officers, chief financial officers, and general counsel of the Office of Information Technology.
q. The director of the State Museum of Art.
r. The executive director of the Agency for Public Telecommunication.
s. The Commissioner of Motor Vehicles.
t. The Commissioner of Banks and the chief deputy commissioners of the Banking Commission.
u. The executive director of the North Carolina Housing Finance Agency.
v. The executive director, chief financial officer, and chief operating officer of the North Carolina Turnpike Authority."

SECTION 11. G.S. 143B-478 is amended by adding a new subsection to read:

"(f) The Commission shall be treated as a board for purposes of Chapter 138A of the General Statutes."

SECTION 12. G.S. 138A-22 is amended by adding a new subsection to read:

"(d1) In addition to subsections (a) and (d) of this section, a covered person holding elected office or a former covered person who held elected office subject to this Article shall file a statement of economic interest in all of the following instances, as specified:

(1) Filed on or before April 15 of the year following the year a covered person elects not to continue in the position making that individual a covered person, with all information provided in the statement of economic interest current as of the last day of December of the preceding year.
(2) Filed on or before April 15 of the year following the year the covered person resigns from the position making that individual a covered person, with all information provided in the statement of economic interest current as of the last day in the position.
(3) Filed on or before April 15 of the year following the year the covered person dies while holding the position that made the deceased a covered person, with all information provided in the statement of economic interest current as of the day of death. The statement of economic interest shall be filed by the personal representative of the estate."

SECTION 13.(a) G.S. 138A-24(a) reads as rewritten:

"**§ 138A-24. Contents of statement.**

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

(1) Except as otherwise provided in this subdivision, the name, current mailing address, occupation, employer, and business of the filing person. Any individual holding or seeking elected office for which residence is a qualification for office shall include a home address. A judicial officer may use a current mailing address instead of the home address on the form required in this subsection. The judicial officer may also use the initials instead of the name of any unemancipated child of the judicial officer who also resides in the household of the judicial officer. If the judicial officer provides the initials of an unemancipated child, the judicial officer shall concurrently provide the name of the unemancipated child to the Commission. The name of an unemancipated child provided by the judicial officer to the Commission shall not be a public record under Chapter 132 of the General Statutes and is privileged and confidential.

(2) A list of each asset and liability included in this subdivision of whatever nature (including legal, equitable, or beneficial interest) with a value of at least ten thousand dollars ($10,000) owned by the filing person and the filing person's immediate family, except assets or liabilities held in a blind trust. This list shall include the following:

a. All real estate located in the State owned wholly or in part by the filing person or the filing person's immediate family, including descriptions adequate to determine the location by city and county of each parcel.

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

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

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

e. The name of each publicly owned company. For purposes of this sub-subdivision, the term "publicly owned company" shall not include a widely held investment fund, including a mutual fund, regulated investment company, or pension or deferred compensation plan, if all of the following apply:

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

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

f. The name of each nonpublicly owned company or business entity, including interests in sole proprietorships, partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations.

g. For each company or business entity listed under sub-subdivision f. of this subdivision, if known, a list of any other companies or business entities in which the company or business entity owns securities or equity interests exceeding a value of ten thousand dollars ($10,000).

~~h. A list of all nonpublicly owned businesses of which the filing person and the filing person's immediate family is an officer, employee, director, partner, owner, or member or manager of a limited liability company.~~

i. For any company or business entity listed under sub-subdivisions f., g., and h. of this subdivision, if known, any company or business entity that has any material business dealings, contracts, or other involvement with the State, or is regulated by the State, including a brief description of the business activity.

j. For a vested trust created, established, or controlled by the filing person of which the filing person or the members of the filing person's immediate family are the beneficiaries, excluding a blind trust, the name and address of the trustee, a description of the trust, and the filing person's relationship to the trust.

k. A list of all liabilities, excluding indebtedness on the filing person's primary personal residence, by type of creditor and debtor.

l. Repealed by Session Laws 2007-348, s. 34. See Editor's note for effective date.

m. A list of all stock options in a company or business not otherwise disclosed on this statement.

(3) The name of each source (not specific amounts) of income of more than five thousand dollars ($5,000) received during the previous year by business or industry type, if that source is not listed under subdivision (2) of this subsection. Income shall include salary, wages, professional fees, honoraria, interest, dividends, rental income, and business income from any source other than capital gains, federal government retirement, military retirement, or social security income.

(4) If the filing person is a practicing attorney, an indication of whether the filing person, or the law firm with which the filing person is affiliated, earned legal fees during the past year in excess of ten thousand dollars ($10,000) from any of the following categories of legal representation:

a. Administrative law.
b. Admiralty law.
c. Corporate law.
d. Criminal law.
e. Decedents' estates law.
f. Environmental law.
g. Insurance law.
h. Labor law.
i. Local government law.
j. Negligence or other tort litigation law.
k. Real property law.
l. Securities law.
m. Taxation law.
n. Utilities regulation law.

(5) Except for a filing person in compliance under subdivision (4) of this subsection, if the filing person is a licensed professional or provides consulting services, either individually or as a member of a professional association, a list of categories of business and the nature of services rendered, for which payment for services were charged or paid during the past year in excess of ten thousand dollars ($10,000).

(6) An indication of whether the filing person, the filing person's employer, a member of the filing person's immediate family, or the immediate family member's employer is licensed or regulated by, or has a business relationship with, the board or employing entity with which the filing person is or will be associated. This subdivision does not apply to a legislator, a judicial officer, or that legislator's or judicial officer's immediate family.

(7) A list of societies, organizations, or advocacy groups, pertaining to subject matter areas over which the public servant's agency or board may have jurisdiction, in which the public servant or a member of the public servant's immediate family is a director, officer, or governing board member. This subdivision does not apply to a legislator, a judicial officer, or that legislator's or judicial officer's immediate family.

(8) A list of all things with a total value of over two hundred dollars ($200.00) per calendar quarter given and received without valuable consideration and under circumstances that a reasonable person would conclude that the thing was given for the purpose of lobbying, if such things were given by a person not required to report under Chapter 120C of the General Statutes, excluding things given by a member of the filing person's extended family. The list

shall include only those things received during the 12 months preceding the reporting period under subsection (d) of this section, and shall include the source of those things. The list required by this subdivision shall not apply to things of monetary value received by the filing person prior to the time the filing person filed or was nominated as a candidate for office, as described in G.S. 138A-22, or was appointed or employed as a covered person.

(9) A list of any felony convictions of the filing person, excluding any felony convictions for which a pardon of innocence or order of expungement has been granted.

(10) Any other information that the filing person believes may assist the Commission in advising the filing person with regards to compliance with this Chapter.

(11) A list of any nonprofit corporation or organization with which associated during the preceding calendar year, including a list of which of those nonprofit corporations or organizations with which associated do business with the State or receive State funds and a brief description of the nature of the business, if known or with which due diligence could reasonably be known.

(12) A statement of whether the filing person or the filing person's immediate family is or has been a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes within the preceding 12 months.

(13) The name of each business with which associated that the filing person or filing person's immediate family is an employee, director, officer, partner, proprietor, or member or manager."

SECTION 13.(b) G.S. 138A-24(c) reads as rewritten:

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

SECTION 13.(c) G.S. 138A-24(a)(2)i. is recodified as G.S. 138A-24(a)(14).

SECTION 13.(d) G.S. 138A-24(a)(14), as enacted by Section 13(c) of this act, reads as rewritten:

"(14) For any company or business entity listed under subdivision (13) of this subsection and sub-subdivisions ~~f., g., and h.~~ f. and g. of subdivision (2) of this ~~subdivision,~~ subsection, if known, a statement whether ~~any~~ that company or business entity ~~that~~ has any material business ~~dealings, contracts, or other involvement~~ business contracts with the State, or is regulated by the State, including a brief description of the business activity."

SECTION 13.(e) This section becomes effective January 1, 2011, and applies to statements of economic interest filed on or after that date.

SECTION 14. G.S. 138A-41 reads as rewritten:

"**§ 138A-41. Other ethics standards.**

(a) Nothing in this Chapter shall prevent the Supreme Court, the Committee, the Legislative Services Commission, constitutional officers of the State, heads of principal departments, the Board of Governors of The University of North Carolina, the State Board of Community Colleges, or other boards from adopting additional or supplemental ethics standards applicable to that public agency's operations.

(b) The Governor, as a constitutional officer of the State, shall have the authority to adopt additional and supplemental ethics standards applicable to any appointee of the Governor

to any State board, commission, council, committee, task force, authority, or similar public body, however denominated, created by statute or executive order, whether advisory or non-advisory in authority. If the Governor adopts such ethics standards, the standards shall be published in the North Carolina Register and made available to each appointee subject to the ethics standards.

(c) The Governor, as a constitutional officer of the State, shall have the authority to adopt minimum ethics standards applicable to any employee of a State agency. If the Governor adopts such standards, the ethics standards shall be published in the North Carolina Register and made available to each employee subject to the ethics standards."

SECTION 15.(a) G.S. 120C-303(a) reads as rewritten:

"(a) Except as provided in subsection (b) of this section, no lobbyist or lobbyist principal may do any of the following:

(1) Knowingly give a gift to a designated individual.

(2) Knowingly give a gift with the intent that a designated individual be ~~the~~ an ultimate recipient."

SECTION 15.(b) G.S. 138A-32(c) reads as rewritten:

"(c) No public servant, legislator, or legislative employee shall knowingly accept a gift from a lobbyist or lobbyist principal registered under Chapter 120C of the General Statutes. No legislator or legislative employee shall knowingly accept a gift from liaison personnel designated under Chapter 120C of the General Statutes. No public servant, legislator, or legislative employee shall accept a gift knowing all of the following:

(1) The gift was obtained indirectly from a lobbyist, lobbyist principal, or liaison personnel registered under Chapter 120C of the General Statutes.

(2) The lobbyist, lobbyist principal, or liaison personnel registered under Chapter 120C of the General Statutes intended for ~~the~~ an ultimate recipient of the gift to be a public servant, legislator, or legislative employee as provided in G.S. 120C-303."

SECTION 15.(c) G.S. 138A-32(d1) reads as rewritten:

"(d1) No public servant shall accept a gift knowing all of the following:

(1) The gift was obtained indirectly from a person described under subdivisions (d)(1), (2), and (3) of this section.

(2) The person described under subdivisions (d)(1), (2), and (3) of this section intended for ~~the~~ an ultimate recipient of the gift to be a public servant."

SECTION 15.(d) This section becomes effective December 1, 2010, and applies to offenses committed on or after that date.

SECTION 16. G.S. 120C-101(c) reads as rewritten:

"(c) In adopting rules under this Chapter, the Commission is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes, except that the Commission shall comply with G.S. 150B-21.2(d). At least 30 business days prior to adopting a rule, the Commission shall:

(1) Publish the proposed rules in the North Carolina Register.

(2) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet to be posted within five business days.

(3) Notify those on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a rule and of the public hearing.

(4) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.

(5) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted under this subsection becomes effective the first day of the month following the month the final rule is submitted to the Codifier of Rules for entry into the North Carolina Administrative ~~Code.~~Code, and applies prospectively. A rule adopted by the Commission that does not comply with the procedural requirements of this subsection shall be null, void, and without effect. For purposes of this subsection, a rule is any Commission regulation, standard, or statement of general applicability that interprets an enactment by the General Assembly or Congress, or a regulation adopted by a federal agency, or that describes the procedure or practice requirements of the Commission."

SECTION 17.(a) G.S. 120C-100(a)(9) reads as rewritten:

"(9) Lobby or Lobbying. – Any of the following:

a. Influencing or attempting to influence legislative or executive action, or both, through direct communication or activities with a designated individual or that designated individual's immediate family.

b. Developing goodwill through communications or activities, including the building of relationships, with a designated individual or that designated individual's immediate family with the intention of influencing current or future legislative or executive action, or both.

The ~~term~~ terms "lobby" or "lobbying" ~~does~~ do not include communications or activities as part of a business, civic, religious, fraternal, personal, or commercial relationship which is not connected to legislative or executive action, or both."

SECTION 17.(b) G.S. 120C-100(a)(10) reads as rewritten:

"(10) Lobbyist. – An individual who engages in lobbying for payment and meets any of the following criteria:

a. Repealed by Session Laws 2007-348, s. 8(a), effective October 10, 2007.

b. Represents another person or governmental unit, but is not directly employed by that person or governmental ~~unit, and receives payment for services.~~ unit.~~For the purposes of this sub-subdivision, the term "payment for services" shall not include reimbursement of actual travel and subsistence.~~

c. Contracts for ~~economic consideration~~ payment for ~~the purpose of~~ lobbying.

d. Is employed by a person and a significant part of that employee's duties include lobbying. In no case shall an employee be considered a lobbyist if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)a. of this section or if in no 30-day period less than five percent (5%) of that employee's actual duties include engaging in lobbying as defined in subdivision (9)b. of this section.

The term "lobbyist" shall not include individuals who are specifically exempted from this Chapter by G.S. 120C-700 or registered as liaison personnel under Article 5 of this Chapter."

SECTION 17.(c) G.S. 120C-100(a)(11) reads as rewritten:

"(11) Lobbyist principal and principal. – The person or governmental unit on whose behalf the lobbyist ~~lobbies.~~ lobbies and who makes payment for the lobbying. In the case where a lobbyist is ~~compensated~~ paid by a law firm, consulting firm, or other entity retained by a person or governmental unit for lobbying, the principal is the person or governmental unit whose interests the lobbyist represents in lobbying. In the case of a lobbyist employed or retained by an association or other organization, the lobbyist principal is the

association or other organization, not the individual members of the association or other organization.

The term "lobbyist principal" shall not include those designating registered liaison personnel under Article 5 of this Chapter."

SECTION 17.(d) G.S. 120C-100(a)(11k) reads as rewritten:

"(11k) ~~Payment for services.~~Payment. – Any money, thing of value, or economic benefit ~~paid~~ conveyed to ~~a~~ the lobbyist for ~~the purpose of lobbying~~ lobbying, other than reimbursement of actual travel, administrative expenses, or subsistence."

SECTION 17.(e) G.S. 120C-100(a)(13) reads as rewritten:

"(13) Solicitation of others. – A solicitation of members of the public to communicate directly with or contact one or more designated individuals ~~for the purpose of influencing or attempting~~ to influence or attempt to influence legislative or executive action to further the solicitor's position on that legislative or executive action, when that request is made by any of the following methods:

a. A broadcast, cable, or satellite transmission.
b. An e-mail communication or a Web site posting.
c. A communication delivered by print media as defined in G.S. 163-278.38Z.
d. A letter or other written communication delivered by mail or by comparable delivery service.
e. Telephone.
f. A communication at a conference, meeting, or similar event.

The term "solicitation of others" does not include communications made by a person or by the person's agent to that person's stockholders, employees, board members, officers, members, subscribers, or other recipients who have affirmatively assented to receive the person's regular publications or notices."

SECTION 17.(f) G.S. 120C-300 reads as rewritten:

"**§ 120C-300. Contingency fees prohibited.**

(a) No individual shall act as a lobbyist ~~for~~ and receive payment for ~~services~~ lobbying that is dependent upon the result or outcome of any legislative or executive action.

(b) This section shall not apply to an individual doing business with the State who is engaged in sales with respect to that business with the State whose regular remuneration agreement includes commissions based on those sales. For purposes of this subsection, the term "regular remuneration" means any money, thing of value, or economic benefit conferred on or received by the individual in return for services rendered or to be rendered by that individual or another.

(c) Any payment ~~for services~~ to a lobbyist in violation of this section is subject to forfeiture and shall be paid into the Civil Penalty and Forfeiture Fund."

SECTION 17.(g) G.S. 120C-305 reads as rewritten:

"**§ 120C-305. Prohibition on the use of cash or credit of the lobbyist.**

No lobbyist or another acting on the lobbyist's behalf shall ~~permit~~ lobby by permitting a designated individual, or that designated individual's immediate family member, to use the cash or credit of the lobbyist ~~for the purpose of lobbying~~ unless the lobbyist is in attendance at the time of the reportable expenditure. G.S. 120C-303 applies to this section."

SECTION 17.(h) G.S. 120C-400(a) reads as rewritten:

"**§ 120C-400. Reporting of reportable expenditures.**

(a) For purposes of this Chapter, all reportable expenditures made for ~~the purpose of~~ lobbying shall be reported, including the following:

(1) Reportable expenditures benefiting or made on behalf of a designated individual in the regular course of that designated individual's employment.

(1a) Reportable expenditures benefiting or made on behalf of a designated individual's immediate family member in the regular course of that immediate family member's employment.

(2) Contractual arrangements or direct business relationships between a lobbyist or lobbyist principal and a designated individual, or that designated individual's immediate family member, in effect during the reporting period or the previous 12 months.

(3) Reportable expenditures reimbursed to a lobbyist in the ordinary course of business by the lobbyist principal or other employer."

SECTION 17.(i) G.S. 120C-402(b) reads as rewritten:

"(b) The report shall include all of the following for the reporting period:

(1) All reportable expenditures made for ~~the purpose of~~ lobbying.

(2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars ($3,000).

(3) Reportable expenditures reimbursed by the lobbyist principal, or another person or governmental unit on the lobbyist principal's behalf.

(4) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9), 138A-32(e)(11), 138A-32(e)(12), and all gifts given under G.S. 138A-32(e)(10) with a value of more than ten dollars ($10.00)."

SECTION 17.(k) G.S. 120C-403 reads as rewritten:

"**§ 120C-403. Lobbyist principal's reports.**

(a) Each lobbyist principal shall file quarterly reports under oath with the Secretary of State with respect to each lobbyist principal.

(b) The report shall be filed whether or not reportable expenditures are made, shall be due ~~10~~ 15 business days after the end of the reporting period, and shall include all of the following for the reporting period:

(1) All reportable expenditures made for ~~the purpose of~~ lobbying.

(2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars ($3,000).

(3) Recodified as G.S. 120C-403(d).

(4) With respect to each lobbyist registered under G.S. 120C-206, reportable expenditures reimbursed or paid to lobbyists for lobbying that are not reported on the lobbyist's report, with an itemized description of those reportable expenditures.

(5) All reportable expenditures for gifts given under G.S. 138A-32(e)(1)-(9), 138A-32(e)(11), 138A-32(e)(12), and all gifts given under G.S. 138A-32(e)(10) with a value of more than two hundred dollars ($200.00).

(6) With respect to each lobbyist registered under G.S. 120C-206, the name of each person or governmental unit not otherwise registered as a lobbyist principal for whom the lobbyist principal directs or permits the lobbyist to lobby, whether for pay or not.

(c) In addition to the reports required by this section, each lobbyist principal incurring reportable expenditures in any month while the General Assembly is in session with respect to lobbying legislators and legislative employees shall file a monthly reportable expenditure report. The monthly reportable expenditure report shall contain information required by this section with respect to all lobbying of legislators and legislative employees, and is due within 10 business days after the end of the month. The information on the monthly report shall also be included in each quarterly report required by subsection (a) of this section.

(d) In addition to the reports required by this section, each lobbyist principal shall annually, in the last report of the registration period under G.S. 120C-200(d), report the total of all payments for lobbying and other activities described in subdivision (2) of subsection (e) of this section made during the registration period, as applicable:

(1) If a lobbyist represents the lobbyist principal, but is not directly employed by that lobbyist principal, the portion of the payment that is for lobbying and to whom it was paid.

(2) If a lobbyist is under contract with the lobbyist principal for lobbying, the portion of the contract that is reasonably allocated for lobbying.

(3) If a lobbyist is a full-time employee of the principal, or is paid by means of an annual fee or retainer, the principal shall estimate and report the portion of the salary, fee, or retainer salary that is reasonably allocated for lobbying.

(e) For purposes of subsection (d) of this section, the following shall apply:

(1) A lobbyist principal may rely upon a statement by the lobbyist estimating the portion of the salary or other payment that is reasonably allocated for lobbying.

(2) In addition to reporting any payment to a lobbyist for lobbying under subsection (d) of this section, a lobbyist principal shall report any payment to a lobbyist for any of the following communications and activities that were used to lobby within the registration period under G.S. 120C-200(d):

a. Research.

b. Drafting of written communications.

c. Monitoring of proposed or pending legislative action or executive action, including time spent preparing communications with the lobbyist principal to relate information on proposed or pending legislative action or executive action.

d. Time spent advising and rendering opinions to the lobbyist principal as to the construction and effect of proposed or pending legislative action or executive action.

(3) A lobbyist principal is required to report any payment to a lobbyist for any of the following:

a. Direct lobbying communications or direct lobbying activities with a designated individual or that designated individual's immediate family.

b. Communications or activities to develop goodwill, including the building or relationships, with a designated individual or that designated individual's immediate family member."

SECTION 17.(l) G.S. 120C-404(b)(1) reads as rewritten:

"(1). All reportable expenditures made for ~~the purpose of~~ lobbying during the reporting period."

SECTION 17.(m) G.S. 120C-501(e) reads as rewritten:

"(e) The Board of Governors of the University of North Carolina and its constituent institutions, or the liaison personnel designated by that board or the constituent institutions, shall not give, for ~~the purpose of~~ lobbying, athletic tickets to any designated individual, except for those who are described in G.S. 138A-3(30)j. or those who are students and receive tickets on the same basis as other students."

SECTION 17.(n) G.S. 120C-800(a) reads as rewritten:

"(a) If a designated individual accepts a reportable expenditure made for ~~the purpose of~~ lobbying with a total value of over two hundred dollars ($200.00) per calendar quarter from a person or group of persons acting together, exempted or not otherwise covered by this Chapter, the person, or group of persons, making the reportable expenditure shall report the date, a

description of the reportable expenditure, the name and address of the person, or group of persons, making the reportable expenditure, the name of the designated individual accepting the reportable expenditure, and the estimated fair market value, or face value if shown, of the reportable expenditure."

SECTION 17.(o) G.S. 138A-3(1) reads as rewritten:

"(1) Blind trust. – A trust established by or for the benefit of a covered person or a member of the covered person's immediate family for ~~the purpose of~~ divestiture of all control and knowledge of assets. A trust qualifies as a blind trust under this subdivision if the covered person or a member of the covered person's immediate family has no knowledge of the holdings and sources of income of the trust, the trustee of the trust is independent of and not associated with or employed by the covered person or a member of the covered person's immediate family and is not a member of the covered person's extended family, and the trustee has sole discretion as to the management of the trust assets."

SECTION 17.(p) G.S. 138A-3(15) reads as rewritten:

"(15) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, liaison personnel, or a person described under G.S. 138A-32(d)(1), (2), or (3). The following shall not be considered gifts under this subdivision:

a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.

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

c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for ~~the purpose of~~ lobbying.

d. Academic or athletic scholarships based on the same criteria as applied to the public.

e. Campaign contributions properly received and reported as required under Article 22A of Chapter 163 of the General Statutes.

f. Expressions of condolence related to a death of an individual, sent within a reasonable time of the death, if the expression is one of the following:

1. A sympathy card, letter, or note.
2. Flowers.
3. Food or beverages for immediate consumption.
4. Donations to a religious organization, charity, the State or a political subdivision of the State, not to exceed a total of two hundred dollars ($200.00) per death per donor."

SECTION 17.(q) G.S. 138A-13(f) reads as rewritten:

"(f) This section shall apply to judicial officers only for ~~the purpose of~~ advice related to Article 3 of this Chapter."

SECTION 17.(r) G.S. 138A-24(a)(8) reads as rewritten:

"(8) A list of all things with a total value of over two hundred dollars ($200.00) per calendar quarter given and received without valuable consideration and under circumstances that a reasonable person would conclude that the thing was given for ~~the purpose of~~ lobbying, if such things were given by a person not required to report under Chapter 120C of the General Statutes, excluding things given by a member of the filing person's extended family. The list

shall include only those things received during the 12 months preceding the reporting period under subsection (d) of this section, and shall include the source of those things. The list required by this subdivision shall not apply to things of monetary value received by the filing person prior to the time the filing person filed or was nominated as a candidate for office, as described in G.S. 138A-22, or was appointed or employed as a covered person."

SECTION 17.(s) G.S. 138A-32(e)(10) reads as rewritten:

"(10) Gifts given or received as part of a business, civic, religious, fraternal, personal, or commercial relationship provided all of the following conditions are met:

a. The relationship is not related to the public servant's, legislator's, or legislative employee's public service or position.

b. The gift is made under circumstances that a reasonable person would conclude that the gift was not given ~~for the purpose of lobbying.~~ to lobby."

SECTION 17.(t) This section is effective January 1, 2011, and applies to offenses committed on or after that date, and reports filed on or after that date.

SECTION 18.(a) G.S. 126-23 reads as rewritten:

"**§ 126-23. Certain records to be kept by State agencies open to inspection.**

(a) Each department, agency, institution, commission and bureau of the State shall maintain a record of each of its employees, showing the following information with respect to each such employee:

(1) ~~name,~~Name.

(2) ~~age,~~Age.

(3) ~~date~~Date of original employment or appointment to the State ~~service,~~service.

(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its ~~possession,~~possession.

(5) ~~current position,~~ Current position.

(6) ~~title,~~Title.

(7) ~~current salary,~~Current salary.

(8) ~~date~~Date and amount of ~~most recent~~each increase or decrease in ~~salary,~~salary with that department, agency, institution, commission, or bureau.

(9) ~~date~~Date and type of ~~most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification,~~classification with that department, agency, institution, commission, or bureau.

(10) ~~and the~~The office or station to which the employee is currently assigned.

(b) For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Subject only to rules and regulations for the safekeeping of the records, adopted by the State Personnel Commission, every person having custody of such records shall permit them to be inspected and examined and copies thereof made by any person during regular business hours. Any person who is denied access to any such record for the purpose of inspecting, examining or copying the same shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 18.(b) G.S. 115C-320 reads as rewritten:

"**§ 115C-320. Certain records open to inspection.**

(a) Each local board of education shall maintain a record of each of its employees, showing the following information with respect to each employee:

(1) ~~name,~~ Name.
(2) ~~age,~~ Age.
(3) ~~date~~Date of original employment or ~~appointment,~~appointment.
(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the board has the written contract or a record of the oral contract in its ~~possession,~~possession.
(5) ~~current position,~~ Current position.
(6) ~~title,~~ Title.
(7) ~~current salary,~~ Current salary.
(8) ~~date~~Date and amount of ~~most recent~~ each increase or decrease in ~~salary,~~ salary with that local board of education.
(9) ~~date~~Date and type of ~~most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification, and~~classification with that local board of education.
(10) ~~the~~The office or station to which the employee is currently assigned.

(b) For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Subject only to rules and regulations for the safekeeping of records adopted by the local board of education, every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours. The name of a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes shall not be open to inspection and shall be redacted from any record released pursuant to this section. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 18.(c) G.S. 115D-28 reads as rewritten:

"**§ 115D-28. Certain records open to inspection.**

(a) Each board of trustees shall maintain a record of each of its employees, showing the following information with respect to each employee:

(1) ~~name,~~ Name.
(2) ~~age,~~ Age.
(3) ~~date~~Date of original employment or ~~appointment,~~appointment.
(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the board has the written contract or a record of the oral contract in its ~~possession,~~possession.
(5) ~~current position,~~ Current position.
(6) ~~title,~~ Title.
(7) ~~current salary,~~ Current salary.
(8) ~~date~~Date and amount of ~~most recent~~each increase or decrease in ~~salary,~~ salary with that community college.
(9) ~~date~~Date and type of ~~most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification, and~~classification with that community college.
(10) ~~the~~The office or station to which the employee is currently assigned.

(b) For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Subject only to rules and regulations for the safekeeping of records adopted by the board of trustees, every person having custody of the records shall permit them to be inspected

and examined and copies made by any person during regular business hours. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief."

SECTION 18.(d) G.S. 122C-158(b) reads as rewritten:

"(b) The following information with respect to each employee is a matter of public record:

(1) ~~name;~~ Name.
(2) ~~age;~~ Age.
(3) ~~date~~Date of original employment or appointment to the area ~~authority;~~authority.
(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its ~~possession;~~possession.
(5) ~~current position~~ Current position.
(6) ~~title;~~ Title.
(7) ~~current salary;~~ Current salary.
(8) ~~date~~Date and amount of ~~most recent~~each increase or decrease in ~~salary;~~ salary with that area authority.
(9) ~~date~~ Date and type of ~~the most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification; and~~classification with that area authority.
(10) ~~the~~ The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The area authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying during regular business hours, subject only to rules for the safekeeping of public records as the area authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue these orders."

SECTION 18.(f) G.S. 153A-98(b) reads as rewritten:

"(b) The following information with respect to each county employee is a matter of public record:

(1) ~~name;~~ Name.
(2) ~~age;~~ Age.
(3) ~~date~~ Date of original employment or appointment to the county ~~service;~~service.
(4) ~~the~~ The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the county has the written contract or a record of the oral contract in its ~~possession;~~possession.
(5) ~~current position~~ Current position.
(6) ~~title;~~ Title.
(7) ~~current salary;~~ Current salary.
(8) ~~date~~Date and amount of ~~the most recent~~each increase or decrease in ~~salary;~~ salary with that county.
(9) ~~date~~ Date and type of ~~the most recent~~each promotion, demotion, transfer, suspension, separation or other change in position ~~classification; and~~classification with that county.
(10) ~~the~~ The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The board of county commissioners shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the board of commissioners may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

SECTION 18.(g) G.S. 160A-168(b) reads as rewritten:

"(b) The following information with respect to each city employee is a matter of public record:

(1) ~~name;~~ Name.
(2) ~~age;~~ Age.
(3) ~~date~~Date of original employment or appointment to the ~~service;~~service.
(4) ~~the~~ The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the city has the written contract or a record of the oral contract in its ~~possession;~~possession.
(5) ~~current position~~ Current position.
(6) ~~title;~~Title.
(7) ~~current salary;~~Current salary.
(8) ~~date~~Date and amount of ~~the most recent~~each increase or decrease in ~~salary;~~ salary with that municipality.
(9) ~~date~~Date and type of ~~the most~~each recent promotion, demotion, transfer, suspension, separation, or other change in position ~~classification; and~~classification with that municipality.
(10) ~~the~~The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The city council shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the city council may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

SECTION 18.(h) G.S. 162A-6.1(b) reads as rewritten:

"(b) The following information with respect to each authority employee is a matter of public record:

(1) ~~name;~~ Name.
(2) ~~age;~~ Age.
(3) ~~date~~Date of original employment or appointment to the ~~service;~~service.
(4) ~~the~~The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the authority has the written contract or a record of the oral contract in its ~~possession;~~possession.
(5) ~~current position~~ Current position.
(6) ~~title;~~ Title.
(7) ~~current salary;~~Current salary.

(8) ~~date~~Date and amount of ~~the most recent~~each increase or decrease in ~~salary;~~ salary with that authority.

(9) ~~date~~ Date and type of ~~the most recent~~each promotion, demotion, transfer, suspension, separation, or other change in position ~~classification; and~~classification with that authority.

(10) ~~the~~The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders."

SECTION 18.(i) This section becomes effective October 1, 2010.

SECTION 19.(a) G.S. 120C-600 is amended by adding a new subsection to read:

"(d) The Secretary shall publish annual statistics on complaints received and systematic reviews conducted under this section, including the number of systematic reviews, the number of complaints, the number of apparent violations of this Chapter referred to a district attorney, the number of complaints dismissed, and the number and age of complaints pending. Subject to the provisions of Chapter 132 of the General Statutes, the levy of all civil fines, including the amount of the fine and the identity of the person or governmental unit against whom it was levied, shall be a public record as defined in G.S. 132-1(a)."

SECTION 19.(b) G.S. 120C-601 is amended by adding a new subsection to read:

"(d) The Commission shall publish annual statistics on complaints, including the number of complaints, the number of apparent violations of this Chapter referred to a district attorney, the number of dismissals, and the number and age of complaints pending."

SECTION 20.(a) Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.3E. Mediation of public records disputes.**

(a) Voluntary Mediation. – The parties to a public records dispute under Chapter 132 of the General Statutes may agree at anytime prior to filing a civil action under Chapter 132 of the General Statutes to mediation of the dispute under the provisions of this section. Mediation of a public records dispute shall be initiated by filing a request for mediation with the clerk of superior court in a county in which the action may be brought.

(b) Mandatory Mediation. – Subsequent to filing a civil action under Chapter 132 of the General Statutes, a person shall initiate mediation pursuant to this section. Such mediation shall be initiated no later than 30 days from the filing of responsive pleadings with the clerk in the county where the action is filed.

(c) Initiation of Mediation. – The Administrative Office of the Courts shall prescribe a request for mediation form. The party filing the request for mediation shall mail a copy of the request by certified mail, return receipt requested, to each party to the dispute. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(d) Mediation Procedure. – Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section.

(e) Waiver of Mediation. – The parties to the dispute may waive the mediation required by this section by informing the mediator of the parties' waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting.

(f) Certification That Mediation Concluded. – Immediately upon a waiver of mediation under subsection (e) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party.

(g) Time Periods Tolled. – Time periods relating to the filing of a claim or the taking of other action with respect to a public records dispute, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (f) of this section.

(h) Nothing in this section shall be prevent a party seeking production of public records from seeking injunctive or other relief, including production of public records prior to any scheduled mediation."

SECTION 20.(b) G.S. 7A-38.2(a) reads as rewritten:

"(a) The Supreme Court may adopt standards of conduct for mediators and other neutrals who are certified or otherwise qualified pursuant to G.S. 7A-38.1, 7A-38.3, 7A-38.3B, 7A-38.3D, 7A-38.3E, and 7A-38.4A, or who participate in proceedings conducted pursuant to those sections. The standards may also regulate mediator and other neutral training programs. The Supreme Court may adopt procedures for the enforcement of those standards."

SECTION 20.(c) G.S. 132-9 reads as rewritten:

"**§ 132-9. Access to records.**

(a) Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying, and the court shall have jurisdiction to issue such ~~orders.~~ orders if the person has complied with G.S. 7A-38.3E. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(b) In an action to compel disclosure of public records which have been withheld pursuant to the provisions of G.S. 132-6 concerning public records relating to the proposed expansion or location of particular businesses and industrial projects, the burden shall be on the custodian withholding the records to show that disclosure would frustrate the purpose of attracting that particular business or industrial project.

(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court shall allow ~~the prevailing~~ a party seeking disclosure of public records who substantially prevails to recover its reasonable attorneys' fees if attributed

to those public ~~records, unless the court finds the agency acted with substantial justification in denying access to the public records or the court finds circumstances that would make the award of attorneys' fees unjust.~~records. The court may not assess attorneys' fees against the governmental body or governmental unit if the court finds that the governmental body or governmental unit acted in reasonable reliance on any of the following:

(1) A judgment or an order of a court applicable to the governmental unit or governmental body.

(2) The published opinion of an appellate court, an order of the North Carolina Business Court, or a final order of the Trial Division of the General Court of Justice.

(3) A written opinion, decision, or letter of the Attorney General.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court shall assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs."

SECTION 20.(d) This section becomes effective October 1, 2010, and applies to actions filed on or after that date.

SECTION 21.(a) G.S. 138A-14(b) reads as rewritten:

"(b) The Commission shall ~~make~~ offer basic ethics education and awareness presentations to all public servants and their immediate staffs, upon their election, appointment, or employment, and shall offer periodic refresher presentations as the Commission deems appropriate. Every public servant shall participate in an ethics presentation approved by the Commission within six months of the public servant's election, reelection, appointment, or employment, and shall attend refresher ethics education presentations at least every two years thereafter in a manner as the Commission deems appropriate."

SECTION 21.(b) G.S. 138A-24(c2) is recodified as G.S. 138A-22(c2).

SECTION 21.(c) The catch line to G.S. 138A-37 of the General Statutes reads as rewritten:

"**§ 138A-37. Legislator participation in ~~official~~ legislative actions.**"

SECTION 21.(d) G.S. 138A-38(a)(6) and (7) read as rewritten:

"**§ 138A-38. Permitted participation exception.**

(a) Notwithstanding G.S. 138A-36 and G.S. 138A-37, a covered person may participate in an official action or legislative action under any of the following circumstances except as specifically limited:

...

(6) When a public or legislative body records in its minutes that it cannot obtain a quorum in order to take the official or legislative action because the covered person is disqualified from acting under ~~G.S. 130-36,~~ G.S. 138A-36, G.S. 138A-37, or this section, the covered person may be counted for purposes of a quorum, but shall otherwise abstain from taking any further action.

(7) When a public servant notifies the Commission in writing that the public ~~servant judicial employee,~~ servant, or someone whom the public servant appoints to act in the public servant's stead, or both, are the only individuals

having legal authority to take an official action, and the public servant discloses in writing the circumstances and nature of the conflict of interest."

SECTION 21.(e) G.S. 120-104(c) reads as rewritten:

"(c) A legislator who acts in reliance on a formal advisory opinion issued by the Committee under this section shall be entitled to the immunity granted under ~~G.S. 138A-13(b).~~ G.S. 138A-13(b1)."

SECTION 21.(f) G.S. 120C-800(b) reads as rewritten:

"(b) If the person making the reportable expenditure in subsection (a) of this section is outside North Carolina, and the designated individual accepting the reportable expenditure is also outside North Carolina at the time the designated individual accepts the reportable expenditure, then the designated individual accepting the reportable expenditure shall be responsible for filing the report or reporting the information in the designated individual's statement of economic interest in accordance with ~~G.S. 138A-24(a)(2).~~G.S. 138A-24(a)(8)."

SECTION 22. Except as otherwise provided, this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 961

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

H961-AST-167 [v.5]

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

Date _____,2010

Senator _____

moves to amend the bill on page 35, lines 13-14 by inserting the following between those lines:

"**SECTION 21.5.(a)** The Legislative Ethics Committee shall study the need for additional regulation of campaign contributions to State officials and candidates for State office by persons doing business with, or regulated by, the office held by the State official. In particular, the Committee shall study the need to regulate campaign activities by persons doing or seeking to do business of any kind, engaged in activities that are regulated or controlled by, or having financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the State official. The Committee shall also study the statement of economic interest required to be filed under Article 4 of Chapter 138A of the General Statutes, particularly whether that statement accurately and informatively discloses required information.

SECTION 21.5.(b) The Committee shall report its findings and recommendations to the 2011 Regular Session of the General Assembly on or before April 1, 2011.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 961

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

H961-AST-163 [v.5]

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

Date _____,2010

Senator _____

moves to amend the bill on page 21, line 41 by rewriting that line to read:

"**SECTION 13.(e)** G.S. 138A-24(a) is amended by adding a new subdivision to read:

"(15) A statement indicating yes or no as to whether the filing person engaged in any of the following activities during the preceding calendar year, with respect to or on the behalf of the candidate or candidate campaign committee of the covered person who appointed the filing person, if that covered person is a constitutional officer of the State: (i) made a contribution as defined in G.S. 163-278.6(6) of one thousand dollars ($1,000.00) or more, (ii) collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected multiple contribution, (iii) hosted a fundraiser in the filing person's residence or place of business; or (iv) volunteered. This subdivision only applies to filing persons in the following categories:

1. A public servant, or a prospective appointee to, as defined in G.S. 138A-3(30)c.
2. A judicial officer that serves on, or a prospective appointee to, the Supreme Court, the Court of Appeals, the superior court, or the district court.
3. A covered person serving on, or a prospective appointee to, one of the following boards:
   i. Alcoholic Beverage Control Commission.
   ii. Coastal Resources Commission.
   iii. State Board of Education.
   iv. State Board of Elections.
   v. Employment Security Commission.
   vi. Environmental Management Commission.
   vii. Industrial Commission.
   viii. State Personnel Commission.
   ix. Rules Review Commission.
   x. Board of Transportation.
   xi. Board of Governors.

xii. Utilities Commission.
xiii. Wildlife Resources Commission."

SECTION 13.(f) Section 13.(e) of this section becomes effective January 1, 2012, and applies to statement of economic interest filed on or after that date. The remainder of this section becomes effective January 1, 2011, and applies to".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 961

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

H961-AST-156 [v.3]

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

Date _____,2010

Senator Stein

moves to amend the bill on page 13, line 48 by rewriting that line to read:
" ~~through (4).~~through (4) of this subsection.";

and on page 28, line 25 by deleting the phrase "to the State" and substituting "to ~~the~~ State";

and on page 25, line 43 by deleting "or permits";

and on page 25, line 44 by inserting the following at the end of that line:
"If the lobbyist principal is an association or other organization, the lobbyist principal shall not be required to report under this subdivision any individual member of the association or other organization for which the lobbyist is directed to lobby by that lobbyist principal.";

and on page 26, line 2, by deleting "report of the" and substituting "report for the".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 961

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

H961-AST-169 [v.1]

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

Date _____ ,2010

Senator Clodfelter

moves to amend the bill on page 15, lines 9-10 by inserting the following between those lines:

"**SECTION 6.5.** G.S. 150B-38(a) is amended by adding a new subdivision to read:
"(6) The State Board of Elections in the administration of any investigation or audit under the provisions of Article 22A of Chapter 163 of the General Statutes.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 961

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

H961-AST-166 [v.2]

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

Date _____,2010

Senator _____

moves to amend the bill on page 14, line 25 by rewriting that line to read:

"**SECTION 4.(b)** G.S. 14-217 reads as rewritten:

"**§ 14-217. Bribery of officials.**

(a) If any person holding ~~office~~ office, or who has filed a notice of candidacy for or been nominated for such office, under the laws of this State who, except in payment of his legal salary, fees or perquisites, shall receive, or consent to receive, directly or indirectly, anything of value or personal advantage, or the promise thereof, for performing or omitting to perform any official act, which lay within the scope of his official authority and was connected with the discharge of his official and legal duties, or with the express or implied understanding that his official action, or omission to act, is to be in any degree influenced thereby, he shall be punished as a Class F felon.

(b) Indictments issued under these provisions shall specify:

(1) The thing of value or personal advantage sought to be obtained; and

(2) The specific act or omission sought to be obtained; and

(3) That the act or omission sought to be obtained lay within the scope of the defendant's official authority and was connected with the discharge of his official and legal duties.

(c) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 539, s. 1207.

(d) For purposes of this section, a thing of value or personal advantage shall include a campaign contribution made or received under Article 22A of Chapter 163 of the General Statutes.

SECTION 4.(c) This section becomes effective December 1, 2010, and applies to".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED " _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 961

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

H961-AST-164 [v.5]

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

Date _____,2010

Senator Clodfelter

moves to amend the bill on page 28, lines 35-38 by rewriting those lines to read:

"(9) ~~date~~Date, type and general description of the reasons for ~~of most recent~~each promotion, demotion, ~~transfer,~~disciplinary transfer within the previous five years, ~~suspension,~~ disciplinary suspension within the previous five years, separation, or other change in position ~~classification,~~classification with that department, agency, institution, commission, or bureau.";

and on page 29, lines 14-16 by rewriting those lines to read:

"(9) ~~date~~Date, type and general description of the reasons for ~~of most recent~~each promotion, demotion, ~~transfer,~~ disciplinary transfer within the previous five years, ~~suspension,~~ disciplinary suspension within the previous five years, separation, or other change in position ~~classification, and~~classification with that local board of education.";

and on page 29, lines 44-46 by rewriting those lines to read:

"(9) ~~date~~Date, type and general description of the reasons for ~~of most recent~~each promotion, demotion, ~~transfer,~~ disciplinary transfer within the previous five years, ~~suspension,~~ disciplinary suspension within the previous five years, separation, or other change in position ~~classification, and~~classification with that community college.";

and on page 30, lines 20-22 by rewriting those lines to read:

"(9) ~~date~~ Date, type and general description of the reasons for ~~of the most recent~~each promotion, demotion, ~~transfer,~~disciplinary transfer within the previous five years, ~~suspension,~~ disciplinary suspension within the previous five years, separation, or other change in position ~~classification; and~~classification with that area authority.";

and on page 30, lines 48-50 by rewriting those lines to read:

"(9) ~~date~~ Date, type and general description of the reasons for ~~of the most recent~~each promotion, demotion, ~~transfer,~~disciplinary transfer within the previous five years, ~~suspension,~~ disciplinary suspension within the previous five years, separation or other change in position ~~classification; and~~classification with that county.";

and on page 31, lines 25-27 by rewriting those lines to read:

"(9) ~~date~~Date, type and general description of the reasons for ~~of the most recent~~each promotion, demotion, ~~transfer,~~ disciplinary transfer within the previous five years, ~~suspension,~~ disciplinary suspension within the previous five years, separation, or other change in position ~~classification; and~~classification with that municipality.";

and on page 32, lines 3-5 by rewriting those lines to read:

"(9) ~~date~~ Date, type, and general description of the reasons for ~~of the most recent~~each promotion, demotion, ~~transfer,~~disciplinary transfer within the previous five years, ~~suspension,~~ disciplinary suspension within the previous five years, separation, or other change in position ~~classification; and~~classification with that authority.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 1703*
Committee Substitute Favorable 5/26/10

Short Title: Adult Day Care Criminal Record Check Process. (Public)

Sponsors:

Referred to:

May 13, 2010

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DIVISION OF AGING AND ADULT SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO STUDY THE ISSUE OF CRIMINAL HISTORY RECORD CHECKS FOR CURRENT AND PROSPECTIVE OWNERS, OPERATORS, AND VOLUNTEERS OF ADULT DAY CARE PROGRAMS AND ADULT DAY HEALTH SERVICES PROGRAMS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1.(a) The Division of Aging and Adult Services, Department of Health and Human Services, shall study the issue of criminal history record checks for owners, operators, volunteers, and prospective owners, operators, and volunteers in adult day care programs and adult day health services programs. In conducting the study, the Division of Aging and Adult Services shall seek input from the North Carolina Adult Day Services Association and shall ensure that the current process used for adult day care employee criminal history record checks is incorporated into the study. The study shall include the following elements:

(1) Identifying the positions that warrant a criminal history record check.
(2) Developing a process for conducting the criminal history record check.
(3) Designating the entity responsible for requesting the criminal history record check.
(4) Designating the entity responsible for paying for the criminal history record check.
(5) Determining whether a State or a national criminal history record check, or both, is performed.
(6) Defining the relevant offenses that indicate an individual's fitness to have responsibility for the safety and well-being of program participants.
(7) Any other issues deemed appropriate.

SECTION 1.(b) The Division of Aging and Adult Services, Department of Health and Human Services, shall report findings and recommendations on criminal history record checks in adult day and adult day health services programs to the North Carolina Study Commission on Aging on or before November 1, 2010.

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

HOUSE BILL 1703:
Adult Day Care Criminal Record Check Process

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 30, 2010
Introduced by:	Reps. Weiss, Farmer-Butterfield, Pierce, England	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	Second Edition		

SUMMARY: House Bill 1703 would direct the Division of Aging and Adult Services, Department of Health and Human Services, to study the issue of criminal history record checks for current and prospective owners, operators, and volunteers of adult day care programs and adult day health services programs, as recommended by the North Carolina Study Commission on Aging.

[As introduced, this bill was identical to S1189, as introduced by Sen. Swindell, which is currently in Senate Health Care.]

CURRENT LAW:

G.S. 131D-6(b) requires the Social Services Commission in DHHS to adopt rules to protect the health, safety, and welfare of persons in adult day care programs[1]. The rules are required to include minimum standards relating to management of the programs, staffing requirements, building requirements, fire safety, sanitation, nutrition, and program activities. The Commission has adopted the following rules pursuant to this authority:

- 10A NCAC 06R .0305(a)(3) requires a statewide criminal history records search of all newly-hired employees of adult day programs for the past five years conducted by an agency approved by the North Carolina Administrative Office of the Courts.

- 10A NCAC 06R .0508(b)(8)(B) requires an adult day care program to keep individual personnel records on all staff members including evidence of a state criminal history check on each employee providing direct care for a minimum of six years.

BILL ANALYSIS: House Bill 1703 would direct the Division of Aging and Adult Services in DHHS to study the issue of criminal history checks for current and prospective owners, operators and volunteers of adult day care programs and adult day health services programs, and report its findings to the General Assembly by November 1, 2010.

This bill implements one of the recommendations of the North Carolina Study Commission on Aging in its 2010 report to the General Assembly, intended to strengthen the authority of the Department of Health and Human Services to ensure that unfit individuals are prohibited from operating or working in adult day care programs.

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

H1703-SMTG-97(e2) v2

"'Adult Day Care Program' means the provision of group care and supervision in a place other than their usual place of abode on a less than 24-hour basis to adults who may be physically or mentally disabled. This term is used to refer to adult day care programs, adult day health programs, and adult day care and combined adult day health programs (i.e., combination programs)." 10A NCAC 06R .0201.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1383
PROPOSED COMMITTEE SUBSTITUTE S1383-CSSA-79 [v.8]

6/30/2010 7:30:13 PM

Short Title: Safer Streets/DNA Initiatives. (Public)

Sponsors:

Referred to:

May 26, 2010

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON ARRESTED FOR COMMITTING CERTAIN OFFENSES, TO AMEND THE STATUTES THAT PROVIDE FOR A DNA SAMPLE UPON CONVICTION, AND TO PROVIDE FUNDING FOR THE DNA DATABASE AND DATABANK.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as "The DNA Database Act of 2010."

SECTION 2. G.S. 15A-266.2 reads as rewritten:

"**§ 15A-266.2. Definitions.**

As used in this Article, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) "CODIS" means the FBI's national DNA identification index system that allows the storage and exchange of DNA records submitted by federal, State and local forensic DNA laboratories. The term "CODIS" is derived from Combined DNA Index ~~System.~~System (NDIS) administered and operated by the Federal Bureau of Investigation.

(1a) "Custodial Agency" means the governmental entity in possession of evidence collected as part of a criminal investigation or prosecution. ~~This term includes a central evidence storage facility operated by a State agency.~~

(2) "DNA" means deoxyribonucleic acid. DNA is located in the ~~nucleus of~~ cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

(3) "DNA Record" means DNA identification information stored in the State DNA Database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA ~~typing tests.~~ analysis. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification ~~tests~~ analyses on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.

(4) "DNA Sample" ~~in this Article~~ means ~~a~~ blood, ~~buccal,~~ cheek swabs, or any ~~other~~ biological sample containing cells provided by any person with respect

to ~~convicted of~~ offenses covered by this Article or submitted to the ~~SBI Laboratory~~ State Bureau of Investigation pursuant to this Article for analysis pursuant to a criminal ~~investigation.~~investigation or storage or both.

(5) "FBI" means the Federal Bureau of Investigation.

(5a) "NDIS" means the National DNA Index System that is the national DNA database system of DNA ~~profile~~ records ~~which~~ that meet federal quality assurance and privacy standards.

(6) "SBI" means the State Bureau of Investigation. The SBI is responsible for the ~~policy management~~ policy, management, and administration of the State DNA identification record system to support law ~~enforcement, and for liaison with the FBI regarding the State's participation in CODIS.~~enforcement and other criminal justice agencies.

(7) "State DNA Database" means the SBI's DNA identification record system to support law enforcement. It is administered by the SBI and provides DNA records to the FBI for storage and maintenance in CODIS. The SBI's DNA Database system is the collective capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related ~~to forensic casework, to convicted offenders required to provide a DNA sample under this Article, and to anonymous DNA records used for research or quality control.~~ to: forensic casework; convicted offenders, and arrestees required to provide a DNA sample under this Article; persons required to register as sex offenders under G.S. 14-208.7; unidentified persons or body parts; missing persons; relatives of missing persons; and anonymous DNA profiles used for forensic validation, forensic protocol development, or quality control purposes or establishment of a population statistics database for use by criminal justice agencies.

(8) "State DNA Databank" means the repository of DNA samples collected under the provisions of this Article.

(9) "Criminal Justice Agency" means an agency or institution of a federal, State, or local government, other than the office of the public defender, that performs as part of its principal function, activities relating to the apprehension, investigation, prosecution, adjudication, incarceration, supervision, or rehabilitation of criminal offenders.

(10) "Arrestee" means any person arrested for an offense in G.S. 15A-266.3A(d) or (e).

(11) "Conviction" includes a conviction by a jury or a court, a guilty plea, a plea of nolo contendere, or a finding of not guilty by reason of insanity or mental disease or defect."

SECTION 3. G.S. 15A-266.3 reads as rewritten:

"**§ 15A-266.3. ~~Procedural compatibility with the FBI.~~Establishment of State DNA database and databank.**

~~The DNA identification system as established by the SBI shall be compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory equipment, supplies, and computer software.~~ There is established under the administration of the SBI, the State DNA database and State DNA databank. The SBI shall provide DNA records to the FBI for the searching of DNA records nationwide and storage and maintenance by CODIS. The State DNA databank shall serve as the repository for DNA samples obtained pursuant to this Article. The State DNA database shall be compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory and computer equipment, supplies and computer platform and software. The State DNA database shall have

the capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related to all of the following:

(1) Crime scene evidence and forensic casework.

(2) Arrestees, offenders, and persons found not guilty by reason of insanity, who are required to provide a DNA sample under this Article.

(3) Persons required to register as sex offenders under G.S. 14-208.7.

(4) Unidentified persons or body parts.

(5) Missing persons.

(6) Relatives of missing persons.

(7) Anonymous DNA profiles used for forensic validation, forensic protocol development, or quality control purposes or establishment of a population statistics database, for use by criminal justice agencies."

SECTION 4. Article 13 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-266.3A. DNA sample required for DNA analysis upon arrest for certain offenses.**

(a) Unless a DNA sample has previously been obtained by lawful process and the DNA record stored in the State DNA Database, and that sample has not been expunged pursuant to any provision of law, a DNA sample for DNA analysis and testing shall be obtained from any person who is arrested for committing an offense described in subsection (d) or (e) of this section.

(b) The DNA sample shall be obtained from an arrested person at the time of arrest, or when fingerprinted. However, if the person is arrested without a warrant, then the DNA sample shall not be taken until a probable cause determination has been made pursuant to G.S. 15A-511(c)(1). The DNA sample shall be by cheek swab unless a court order authorizes that a DNA blood sample be obtained. If a DNA blood sample is taken, it shall comply with the requirements of G.S. 15A-266.6(b). The DNA sample shall be forwarded to the appropriate laboratory for DNA analysis and testing.

(c) The DNA record of identification characteristics resulting from the DNA testing and the DNA sample itself shall be stored and maintained by the SBI in the State DNA Databank pursuant to this Article.

(d) This section shall apply to a person arrested for violating G.S. 20-106, Receiving or transferring stolen vehicles, or any one of the following offenses in Chapter 14 of the General Statutes:

(1) G.S. 14-17, First and Second Degree Murder.

(2) G.S. 14-18, Manslaughter.

(3) Any offense in Article 7A, Rape and Other Sex Offenses.

(4) Any offense punishable as a felony in Article 8, Assaults; and G.S. 14-32.1, Assault on a Handicapped Person.

(5) Any offense in Article 10, Kidnapping and Abduction, or Article 10A, Human Trafficking.

(6) Any offense in Article 14, Burglary.

(7) Any offense in Article 15, Arson.

(8) Any offense in Article 17, Robbery.

(9) Any offense which would require the person to register under the provisions of Article 27A of Chapter 14 of the General Statutes, Sex Offender and Public Protection Registration Programs.

(10) G.S. 14-196.3, Cyberstalking.

(11) G.S. 14-277.3A, Stalking.

(e) This section shall also apply to a person arrested for attempting, solicitation of another to commit, conspiracy to commit, or aiding and abetting another to commit, any of the violations included in subsection (d) of this section.

(f) The State Bureau of Investigation shall remove a person's DNA record, and destroy any DNA biological samples that may have been retained, from the State DNA Database and DNA Databank if both of the following are determined pursuant to subsection (g):

(1) As to the charge, or all charges, resulting from the arrest upon which a DNA sample is required under this section, a court or the district attorney has taken action resulting in any one of the following:

a. The charge has been dismissed.

b. The person has been acquitted of the charge.

c. No charge was filed within the statute of limitations, if any.

d. No conviction has occurred, and at least five years has passed since the date of arrest.

(2) The person's DNA record is not required to be in the State DNA Database under some other provision of law, or is not required to be in the State DNA Database based upon an offense from a different transaction or occurrence from the one which was the basis for the person's arrest.

(g) Subject to the requirements of subsection (f) of this section, the defendant or the defendant's counsel shall provide the district attorney of the judicial district in which the arrest occurred with a signed request form, promulgated by the Administrative Office of the Courts, requesting that the defendant's DNA record be expunged from the DNA Database and that any biological samples in the DNA Databank be destroyed.

Upon receipt of the request form from the defendant or the defendant's counsel, the district attorney shall (i) determine whether one of the actions in subdivision (1) of subsection (f) of this section has occurred, and if so, (ii) sign the request form or, if the defendant was acquitted or the charges were dismissed by the court, provide the request form for signature by a judge, and (iii) transmit the request form to the SBI no later than 30 days following receipt of the form. If the district attorney determines that none of the actions in subdivision (1) of subsection (f) of this section have occurred, then no later than 30 days following receipt of the request form, the district attorney shall mail to the defendant, at the address specified in the request form, a notice that the DNA record and sample does not qualify for expunction.

Upon receipt of the request form from the district attorney, the SBI shall, within 30 days of receipt of the form, (i) determine whether the requirement of subdivision (2) of subsection (f) of this section has been met, and if so, (ii) remove the person's DNA record and samples as required by subsection (f) of this section. The SBI shall, within 30 days of receipt of the request form, mail to the defendant, at the address specified in the request form, a notice either, (i) documenting expunction of the DNA record and destruction of the DNA sample, or (ii) notifying the defendant that the DNA record and sample do not qualify for expunction pursuant to subsection (f) of this section.

The defendant may file a motion with the court to review the denial of the defendant's request or the failure of either the district attorney or the SBI to act within the prescribed time period.

(h) Any identification, warrant, probable cause to arrest, or arrest based upon a database match is not invalidated due to a failure to expunge or a delay in expunging records.

(i) A DNA record and sample shall not be expunged under this section if the defendant is either found guilty of, or pleads guilty or nolo contendere to, a lesser-included offense of the charge upon which the DNA sample was based.

(j) Notwithstanding subsection (f) of this section, the SBI is not required to destroy or remove an item of physical evidence obtained from a sample if evidence relating to another person would thereby be destroyed.

(k) The SBI shall adopt procedures to comply with this section."

SECTION 5. G.S. 15A-266.4 reads as rewritten:

"§ 15A-266.4. ~~Blood sample~~DNA sample required for DNA analysis upon conviction or finding of not guilty by reason of insanity.

(a) Unless a DNA sample has previously been obtained by lawful process and a record stored in the State DNA ~~database,~~Database, and that ~~sample has~~record and sample have not been expunged pursuant to ~~G.S. 15A-148, on or after December 1, 2003, a person~~any provision of law, a person:

(1) ~~who~~ Who is convicted of any of the crimes listed in subsection (b) of this section or who is found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with ~~G.S. 15A-1321~~G.S. 15A-1321, shall ~~have~~ provide a DNA sample ~~drawn~~ upon intake to jail, prison, or the mental health facility. In addition, every person convicted ~~on or after December 1, 2003,~~ of any of these crimes, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence.

(2) ~~A person who~~Who has been convicted and incarcerated as a result of a conviction of one or more of ~~these crimes prior to December 1, 2003,~~the crimes listed in subsection (b) of this section, or who was found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with ~~G.S. 15A-1321 before December 1, 2003,~~G.S. 15A-1321, shall ~~have~~ provide a DNA sample ~~drawn~~ before parole or release from the penal system or before release from the mental health facility.

(b) Crimes covered by this Article include all of the following:

(1) All felonies.

~~(2) G.S. 14-32.1 – Assaults on handicapped persons.~~

(3) ~~G.S. 14-277.3A or former~~Former G.S. 14-277.3 – Stalking.

~~(4) G.S. 14-27.5A – Sexual battery.~~

(5) All offenses described in G.S. 15A-266.3A."

SECTION 6. G.S. 15A-266.5 reads as rewritten:

"§ 15A-266.5. Tests to be performed on ~~blood sample.~~DNA sample.

(a) The tests to be performed on each ~~blood~~ DNA sample are:

(1) To analyze and type only the genetic markers that are used for identification purposes contained in or derived from the DNA.

(2) For law enforcement identification purposes.

(3) For research and administrative purposes, including:

a. Development of a population database when personal identifying information is removed.

b. To support identification research and protocol development of forensic DNA analysis methods.

c. For quality control purposes.

d. To assist in the recovery or identification of human remains from mass disasters or for other humanitarian purposes, including identification of missing persons.

(b) The DNA record of identification characteristics resulting from the DNA testing shall be stored and maintained by the SBI in the State DNA Database. The DNA sample itself will be stored and maintained by the SBI in the State DNA Databank.

(c) The SBI shall report on the DNA testing and analysis provided under this Article to the Joint Legislative Commission on Governmental Operations annually, no later than February 1."

SECTION 7. G.S. 15A-266.6 reads as rewritten:

"§ 15A-266.6. Procedures for ~~withdrawal of blood sample for~~ obtaining DNA ~~analysis.~~sample for analysis; refusal to provide sample.

(a) Each DNA sample ~~required to be drawn~~ provided pursuant to G.S. 15A-266.4 from persons who are incarcerated shall be ~~drawn~~ obtained at the place of incarceration. DNA samples from persons who are not sentenced to a term of confinement shall be ~~drawn~~ obtained immediately following sentencing. The sentencing court shall order any person not sentenced to a term of ~~confinement~~ confinement, who has not previously provided a DNA sample pursuant to any provision of law requiring a sample and whose DNA record and sample have not been expunged pursuant to law, to report immediately following sentencing to the location designated by the sheriff. If the sample cannot be taken immediately, the sheriff shall inform the court of the date, time, and location at which the sample shall be taken, and the court shall enter that date, time, and location into its order. A copy of the court order indicating the date, time, and location the person is to appear to have a sample taken shall be given to the sheriff. If a person not sentenced to a term of confinement fails to appear immediately following sentencing or at the date, time, and location designated in the court order, the sheriff shall inform the court of the failure to appear and the court may issue an order to show cause pursuant to G.S. 5A-15 and may issue an order for arrest pursuant to G.S. 5A-16. The defendant shall continue to be subject to the court's order to provide a DNA sample until such time as his or her DNA sample is analyzed and a record is successfully entered into the State DNA Database.

(b) If, for any reason, the defendant provides a DNA blood sample instead of a cheek swab, ~~Only~~ only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory technician, phlebotomist, or other health care worker with phlebotomy training shall draw ~~any~~ the DNA blood sample to be submitted for analysis. No civil liability shall attach to any person authorized to draw blood by this section as a result of drawing blood from any person if the blood was drawn according to recognized medical procedures. No person shall be relieved from liability for negligence in ~~the drawing of any~~ obtaining a DNA ~~sample.~~sample by any method.

(c) The SBI shall provide to the sheriff the materials and supplies necessary to ~~draw~~ obtain a DNA sample from a person not sentenced to a term of confinement. Any DNA sample drawn from a person not sentenced to a term of confinement shall be taken using the materials and supplies provided by the SBI.

(d) Duly authorized law enforcement and corrections personnel may employ reasonable force in cases where an individual refuses to provide a DNA sample required under this Article, and no such employee shall be civilly or criminally liable for the use of such reasonable force.

(e) Any person who is subject to the requirements of this Article, and who, after receiving notification of the requirement to provide a DNA sample, knowingly refuses to provide such DNA sample, shall be guilty of a Class A1 misdemeanor.

(f) The detention, arrest, or conviction of a person based upon a database match or database information is not invalidated if it is determined that the sample was obtained or placed in the database by mistake."

SECTION 8. G.S. 15A-266.7 reads as rewritten:

"**§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood~~ DNA sample.**

~~The SBI shall adopt rules governing the procedures to be used in the submission, identification, analysis, and storage of DNA samples and typing results of DNA samples submitted under this Article. The DNA sample shall be securely stored in the State Databank. The typing results shall be securely stored in the State Database. These procedures shall also include quality assurance guidelines to insure that DNA identification records meet standards and audit standards for laboratories which submit DNA records to the State Database. Records of testing shall be retained on file at the SBI.~~

(a) The SBI shall:

(1) Adopt procedures to be used in the submission, identification, analysis, and storage of DNA samples and typing results of DNA samples submitted

under this Article. These procedures shall also include quality assurance guidelines to insure that DNA identification records meet audit standards for laboratories which submit DNA records to the State DNA Database.

(2) Adopt Quality Assurance Guidelines for DNA Testing Laboratories and DNA Databasing Laboratories that meet or exceed the quality assurance guidelines established for such laboratories by the CODIS unit of the Federal Bureau of Investigation.

(b) DNA samples shall be securely stored in the State DNA Databank. The typing results shall be securely stored in the State DNA Database.

(c) Records of testing shall be retained on file at the SBI."

SECTION 9. G.S. 15A-266.8 reads as rewritten:

"§ 15A-266.8. DNA database exchange.

(a) It shall be the duty of the SBI to receive DNA samples, to store, to analyze or to contract out the DNA typing analysis to a qualified DNA laboratory that meets the guidelines as established by the SBI, classify, and file the DNA record of identification characteristic profiles of DNA samples submitted pursuant to ~~G.S. 15A-266.7~~ this Article and to make such information available as provided in this section. The SBI may contract out DNA typing analysis to a qualified DNA laboratory that meets guidelines as established by the SBI. The results of the DNA profile of individuals in the State Database shall be made available to local, State, or federal law enforcement agencies, approved crime laboratories which serve these agencies, or the district attorney's office upon written or electronic request and in furtherance of an official investigation of a criminal offense. These records shall also be available upon receipt of a valid court order directing the SBI to release these results to appropriate parties not listed above, when the court order is signed by a superior court judge after a hearing. The SBI shall maintain a file of such court orders.

(b) The SBI shall adopt rules governing the methods of obtaining information from the State Database and CODIS and procedures for verification of the identity and authority of the requester.

(c) The SBI shall create a separate population database comprised of ~~blood~~ DNA samples obtained under this Article, after all personal identification is removed. Nothing shall prohibit the SBI from sharing or disseminating population databases with other law enforcement agencies, crime laboratories that serve them, or other third parties the SBI deems necessary to assist the SBI with statistical analysis of the SBI's population databases. The population database may be made available to and searched by other agencies participating in the CODIS system."

SECTION 10. G.S. 15A-266.11 reads as rewritten:

"§ 15A-266.11. Unauthorized uses of DNA Databank; penalties.

(a) Any person who, by virtue of employment, or official position, has possession of, or access to, individually identifiable DNA information contained in the State DNA Database or Databank and who willfully discloses it in any manner to any person or agency not entitled to receive it is guilty of a ~~Class 1 misdemeanor in accordance with G.S. 14-3.~~Class H felony.

(b) Any person who, without authorization, willfully obtains individually identifiable DNA information from the State DNA Database or Databank is guilty of a ~~Class 1 misdemeanor in accordance with G.S. 14-3.~~Class H felony."

SECTION 11. G.S. 15A-266.12 reads as rewritten:

"§ 15A-266.12. Confidentiality of records.

(a) All DNA profiles and samples submitted to the SBI pursuant to this Article shall be treated as confidential and shall not be disclosed to or shared with any person or agency except as provided in G.S. 15A-266.8.

(b) Only DNA records and samples that directly relate to the identification of individuals shall be collected and stored. These records and samples shall solely be used as a

part of the criminal justice system for the purpose of facilitating the personal identification of the perpetrator of a criminal offense; provided that in appropriate circumstances such records may be used to identify potential victims of mass disasters or missing persons.

(c) DNA records and DNA samples submitted to the SBI pursuant to this Article are not a public record as defined by G.S. 132-1.

(d) In the case of a criminal proceeding, requests to access a person's DNA record shall be in accordance with the rules for criminal discovery as defined in G.S. 15A-902. The SBI shall not be required to provide the State DNA Database for criminal discovery purposes.

(e) DNA records and DNA samples submitted to the SBI may only be released for the following authorized purposes:

(1) For law enforcement identification purposes, including the identification of human remains, to federal, State, or local criminal justice agencies.

(2) For criminal defense and appeal purposes, to a defendant who shall have access to samples and analyses performed in connection with the case in which such defendant is charged or was convicted.

(3) If personally identifiable information is removed to local, State, or federal law enforcement agencies for forensic validation studies, forensic protocol development or quality control purposes; and for establishment or maintenance of a population statistics database.

(f) In order to maintain the computer system security of the SBI DNA database program, the computer software and database structures used by the SBI to implement this Article are confidential."

SECTION 12. Article 23 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-502A. DNA sample upon arrest.**

A DNA sample shall be obtained from any person arrested for an offense designated under G.S. 15A-266.3A, in accordance with the provisions contained in Article 13 of Chapter 15A of the General Statutes."

SECTION 13. G.S. 7B-2201 reads as rewritten:

"**§ 7B-2201. Fingerprinting and DNA sample from juvenile transferred to superior court.**

(a) When jurisdiction over a juvenile is transferred to the superior court, the juvenile shall be fingerprinted and the juvenile's fingerprints shall be sent to the State Bureau of Investigation.

(b) When jurisdiction over a juvenile is transferred to the superior court, a DNA sample shall be taken from the juvenile if any of the offenses for which the juvenile is transferred are included in the provisions of G.S. 15A-266.3A."

SECTION 14. G.S. 7A-304(a) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(9) For the support and services of the State Bureau of Investigation DNA Database and DNA Databank, the sum of three dollars ($3.00), to be remitted to the Department of Justice."

SECTION 15. Section 14 of this act becomes effective September 1, 2010, and applies to fees assessed or collected on or after that date. The remainder of this act becomes effective January 1, 2011.

SENATE BILL 1383:
Safer Streets/DNA Initiatives

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	June 30, 2010
Introduced by:	Sen. Clodfelter	**Prepared by:**	Susan Sitze
Analysis of:	S1383-CSSA-79[v.8]		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1383 requires that a DNA sample be taken from any person arrested for an offense listed in the act; amends current statutes pertaining to the collection of DNA upon conviction; and provides for a three dollar ($3.00) court fee to be remitted to the Department of Justice for support of the DNA Database.***

CURRENT LAW: Any person convicted of a felony offense, assault on a handicapped person, stalking, or sexual battery must provide a DNA blood sample. If the defendant's sentence includes confinement, the DNA sample is taken at the place of incarceration. If the sentence does not include incarceration, then the court includes, as a part of the judgment, that the defendant report to the sheriff at a time and place designated to provide the sample. If the defendant does not appear, a show cause order is issued, and the defendant may be held in contempt of court.

DNA samples are analyzed and the DNA profile is entered into the State DNA Database. The sample is then searchable through the Combined DNA Index System (CODIS), a DNA database funded by the United States Federal Bureau of Investigation. The DNA profiles are searched against all other profiles in the system, which includes suspect samples, and samples taken from both solved and unsolved crime scenes. If a "hit" is obtained between a sample and an unsolved forensic unknown, a confirmation process is initiated, and a report is issued.

The DNA profile that results from the analysis contains a series of numbers only, and can only identify an individual. The DNA sample is not analyzed for any type of personal physiological information, i.e., information that could disclose a person's propensity for diseases, etc. Consequently, this type of information cannot be included or stored in the State DNA Database. The DNA sample is maintained in order to confirm an identity if there is a "match" to an unsolved criminal offense, and, if requested, to provide a defendant with an opportunity to obtain an independent verification of the DNA profile in the DNA Database.

BILL ANALYSIS: The bill, entitled the "DNA Database Act of 2010," (Sec. 1) would make two significant changes to the State's laws on DNA sampling: DNA samples would be taken from persons upon arrest for specified offenses, and the general method of sampling would be changed from blood sample to cheek swab for all DNA sampling.

Section 2 amends the definitions section for Article 13 of Chapter 15A of the General Statutes (DNA Database and Databank) to reflect and clarify the changes made throughout the remainder of the bill.

Section 3 amends G.S. 15A-266.3 to specifically establish the State DNA database and State DNA databank and set forth their contents.

Section 4:

- A new section would be added to the current statutes, which were enacted by the "DNA Database Act of 2003." The DNA sample would be taken upon arrest, or when the person arrested is fingerprinted at booking. [If the arrest was made without a warrant, the DNA sample may not be taken until a magistrate has found probable cause that a crime was committed, and that the arrested person committed it.] The listed offenses relate to crimes

involving some type of violence, acts that are likely to injure persons or property, or ar recognized as precursors to such acts. Any offense which would require the person tc register as a sex offender, which includes some misdemeanors, is included.

- Records and samples relating to a defendant's DNA sample must be expunged if the charge is dismissed; is not filed in the appropriate time period; if the defendant is acquitted; or if no conviction occurs within 5 years of the arrest. The defendant or defendant's counsel provides a written notice to the district attorney that the defendant wants the DNA record and sample expunged, and the district attorney must initiate the process by: verifying that a qualifying circumstance exists; obtaining a judge's or a District Attorney's signature on a verification form; and the forwarding the form to the SBI. The district attorney has 30 days in which to complete verification and send the form to the SBI, or if he determines that no qualifying circumstance exists, he must notify the defendant by mail that the record is not eligible for expunction.
- The SBI determines whether the defendant's DNA record or sample is required to be maintained under some other provision of law. If not, the SBI expunges the record and sample from the State DNA Database and Databank. The act provides that the expunction is to take place within 30 days of the SBI's receipt of the verification form and the SBI must notify the defendant by mail that the expunction has occurred, or that the defendant does not qualify for expunction.
- If the defendant pleads guilty or nolo contendere to an offense which is a lesser included offense, then the DNA record is not expunged.
- The defendant has the right to have a court review the denial of the expunction or failure o either the district attorney or the SBI to act within the prescribed time period.

Section 5 makes technical amendments and reorganization of the statute that provides for the DNA samples of those convicted of designated offenses, whether sentenced to confinement or not.

- Current law requires persons convicted of felonies, and other designated offenses, to provide a DNA sample. The amendments would add the offenses which are listed in the new section on DNA upon arrest to the statute. Consequently, persons who are convicted of misdemeanor offenses requiring registration on the Sex Offender registry, who were not previously required to provide a DNA sample, would be required to do so.
- The act also amends the provision requiring a person to provide a DNA sample prior to his or her release from incarceration, or institutionalization due to a finding of not guilty by reason of insanity.

Section 6 deletes "blood" to conform to the language in the section on testing to reflect the additional methods of DNA sampling provided in the Article and clarifies that only genetic markers that are used for identification purposes are to be typed. This section includes a reporting provision on DNA analysis and testing by the SBI to the Joint Legislative Commission on Governmental Operations, to be submitted annually by February 1.

Section 7 amends the statute on procedures for obtaining DNA samples of convicted persons to:

- Reflect the additional methods of DNA sampling provided in the act.
- Clarify that if a defendant, who is not confined, provides a sample that can not be loaded intc the State DNA database for any reason, he or she is under a continuing order to provide a DNA sample.

- Authorize law enforcement and corrections personnel to use reasonable force to obtain a DNA sample.
- Creates a Class A1 misdemeanor for refusing to provide a required DNA sample.
- Provides that a detention, arrest, or conviction of a person based upon a database match is not invalidated if it is determined that the sample was placed in the database by mistake.

Section 8 redrafts the section on procedures for conducting DNA analysis to include specific language relating to the adoption of quality assurance guidelines. The SBI would be required to adopt guidelines that meet or exceed the guidelines established by the CODIS unit of the FBI. All current requirements are retained, including the retention of testing records at the SBI.

Section 9 deletes the term "blood" to conform the language in the section on a separate population database to reflect the additional methods of DNA sampling provided in the act.

Section 10 increases the penalty for unauthorized use of the DNA Databank from a Class 1 misdemeanor to a Class H felony.

Section 11 amends the confidentiality of records section to clarify that DNA records and samples are not public record and to provide a list of authorized purposes for release.

Section 12 amends the criminal procedure statutes by adding a new section that cross-references the DNA upon arrest statute. The new section immediately follows the current statute on the fingerprinting and photographing of arrestees, G.S. 15A-502A.

Section 13 amends the statute which requires the fingerprints of a juvenile whose case is transferred to the superior court for trial as an adult. The amendment provides that if the juvenile is transferred for an offense covered under the DNA Article, then a DNA sample would also be obtained.

Section 14 provides for a three dollar ($3.00) criminal court fee, to be assessed in every case where the defendant is convicted, enters a guilty or nolo contendere plea, or when costs are assessed against the prosecuting witness. The fee would be remitted to the Department of Justice, for the support and services of the SBI's DNA Database and DNA Databank.

EFFECTIVE DATE: The court fee provision is effective September 1, 2010, for fees assessed or collected on or after that date. The remainder of the act is effective January 1, 2011.

S1383-SMSA-154(e1) v1

- Any offense in Article 10, Kidnapping and Abduction
  - § 14-39. Kidnapping
  - § 14-40. Enticing minors out of the State for the purpose of employment
  - § 14-41. Abduction of children
  - § 14-43.1. Unlawful arrest by officers from other states
  - § 14-43.3. Felonious restraint

- Any offense in Article 10A, Human Trafficking
  - § 14-43.11. Human trafficking
  - § 14-43.12. Involuntary servitude
  - § 14-43.13. Sexual servitude

- Any offense in Article 14, Burglary
  - § 14-51. First and second degree burglary
  - § 14-51.1. Use of deadly physical force against an intruder
  - § 14-52. Punishment for burglary
  - § 14-53. Breaking out of dwelling house burglary
  - § 14-54. Breaking or entering buildings generally
  - § 14-54.1. Breaking or entering a building that is a place of religious worship
  - § 14-55. Preparation to commit burglary or other housebreakings
  - § 14-56. Breaking or entering into or breaking out of railroad cars, motor vehicles, trailers, aircraft, boats, or other watercraft
  - § 14-56.1. Breaking into or forcibly opening coin- or currency-operated machines
  - § 14-56.2. Damaging or destroying coin- or currency-operated machines
  - § 14-56.3. Breaking into paper currency machines
  - § 14-56.4. Preparation to commit breaking or entering into motor vehicles
  - § 14-57. Burglary with explosives

- Any offense in Article 15, Arson
  - § 14-58.2. Burning of mobile home, manufactured-type house or recreational trailer home
  - § 14-59. Burning of certain public buildings
  - § 14-60. Burning of schoolhouses or buildings of educational institutions
  - § 14-61. Burning of certain bridges and buildings
  - § 14-62. Burning of certain buildings
  - § 14-62.1. Burning of building or structure in process of construction
  - § 14-62.2. Burning of churches and certain other religious buildings
  - § 14-63. Burning of boats and barges
  - § 14-64. Burning of ginhouses and tobacco houses
  - § 14-65. Fraudulently setting fire to dwelling houses
  - § 14-66. Burning of personal property
  - § 14-67.1. Burning other buildings

- § 14-68. Failure of owner of property to comply with orders of public authorities
- § 14-69. Failure of officers to investigate incendiary fires
- § 14-69.1. Making a false report concerning destructive device
- § 14-69.2. Perpetrating hoax by use of false bomb or other device
- § 14-69.3. Arson or other unlawful burning that results in serious injury to a firefighter or emergency medical technician

- Any offense in Article 17, Robbery
  - § 14-87. Robbery with firearms or other dangerous weapons
  - § 14-87.1. Punishment for common-law robbery
  - § 14-88. Train robbery
  - § 14-89.1. Safecracking

- Any offense that would require the person to register under the provisions of Article 27A of Chapter 14, Sex Offender and Public Protection Registration Programs
  - § 14-27.2. First degree rape
  - § 14-27.2A. Rape of a child; adult offender
  - § 14-27.3. Second degree rape
  - § 14-27.4. First degree sexual offense
  - § 14-27.4A. Sex offense with a child; adult offender
  - § 14-27.5. Second degree sexual offense
  - § 14-27.5A. Sexual battery
  - § 14-27.6. Attempted rape or sexual offense
  - § 14-27.7. Intercourse and sexual offense with certain victims
  - § 14-27.7A(a). Statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older
  - § 14-43.13. Subjecting or maintaining a person for sexual servitude
  - § 14-178. Incest between near relatives)
  - § 14-190.6. Employing or permitting minor to assist in offenses against public morality and decency
  - § 14-190.9(a1). Felonious indecent exposure
  - § 14-190.16. First degree sexual exploitation of a minor
  - § 14-190.17. Second degree sexual exploitation of a minor
  - § 14-190.17A. Third degree sexual exploitation of a minor
  - § 14-190.18. Promoting prostitution of a minor
  - § 14-190.19. Participating in the prostitution of a minor
  - § 14-202.1. Taking indecent liberties with children
  - § 14-202.3. Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act
  - § 14-202.4(a). Taking indecent liberties with a student
  - § 14-318.4(a1). Parent or caretaker commit or permit act of prostitution with or by a juvenile
  - § 14-318.4(a2). Commission or allowing of sexual act upon a juvenile by parent or guardian

- Includes a solicitation or conspiracy to commit any of these offenses and/or aiding and abetting any of these offenses.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 961

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

H961-AST-163 [v.5]

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

Date _____,2010

Senator _____

moves to amend the bill on page 21, line 41 by rewriting that line to read:

"**SECTION 13.(e)** G.S. 138A-24(a) is amended by adding a new subdivision to read:

"(15) A statement indicating yes or no as to whether the filing person engaged in any of the following activities during the preceding calendar year, with respect to or on the behalf of the candidate or candidate campaign committee of the covered person who appointed the filing person, if that covered person is a constitutional officer of the State: (i) made a contribution as defined in G.S. 163-278.6(6) of one thousand dollars ($1,000.00) or more, (ii) collected contributions from multiple contributors, took possession of such multiple contributions, and transferred or delivered those collected multiple contribution, (iii) hosted a fundraiser in the filing person's residence or place of business; or (iv) volunteered. This subdivision only applies to filing persons in the following categories:

1. A public servant, or a prospective appointee to, as defined in G.S. 138A-3(30)c.
2. A judicial officer that serves on, or a prospective appointee to, the Supreme Court, the Court of Appeals, the superior court, or the district court.
3. A covered person serving on, or a prospective appointee to, one of the following boards:
   i. Alcoholic Beverage Control Commission.
   ii. Coastal Resources Commission.
   iii. State Board of Education.
   iv. State Board of Elections.
   v. Employment Security Commission.
   vi. Environmental Management Commission.
   vii. Industrial Commission.
   viii. State Personnel Commission.
   ix. Rules Review Commission.
   x. Board of Transportation.
   xi. Board of Governors.

xii. Utilities Commission.
xiii. Wildlife Resources Commission."

SECTION 13.(f) Section 13.(e) of this section becomes effective January 1, 2012, and applies to statement of economic interest filed on or after that date. The remainder of this section becomes effective January 1, 2011, and applies to".

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. 5

H. B. No. 961 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Berger

Amendment AST-163 v. 3

moves to amend the ~~bill~~ on page 1, line 13

( ) WHICH CHANGES THE TITLE

by _____

~~On~~ deleting "Volunteered." and substituting

"Volunteered for campaign related activity.".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 961

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

H961-AST-167 [v.5]

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

Date _____,2010

Senator _____

moves to amend the bill on page 35, lines 13-14 by inserting the following between those lines:

"**SECTION 21.5.(a)** The Legislative Ethics Committee shall study the need for additional regulation of campaign contributions to State officials and candidates for State office by persons doing business with, or regulated by, the office held by the State official. In particular, the Committee shall study the need to regulate campaign activities by persons doing or seeking to do business of any kind, engaged in activities that are regulated or controlled by, or having financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the State official. The Committee shall also study the statement of economic interest required to be filed under Article 4 of Chapter 138A of the General Statutes, particularly whether that statement accurately and informatively discloses required information.

SECTION 21.5.(b) The Committee shall report its findings and recommendations to the 2011 Regular Session of the General Assembly on or before April 1, 2011.".

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. 961 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Stevens
Sen.)

moves to amend the bill on page 14, line 32, line _____

( ) WHICH CHANGES THE TITLE

by deleting "one year" and inserting "six months"

And on page 14, line 36 by rewriting that line to read:

"register as a lobbyist under this Chapter while in office or within six months after"

And on page 14, line 40 by rewriting that line to read:

"register as a lobbyist under this Chapter within six months after separation from"

And on page 14, line 43 by deleting "one year" and inserting "six months"

And on page 14, line 47 by deleting "one year" and inserting "six months"

And on page 1, line 9 by deleting "PERIOD AND"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 961

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

H961-AST-156 [v.3]

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

Date _____,2010

Senator Stein

moves to amend the bill on page 13, line 48 by rewriting that line to read:
" ~~through (4).~~through (4) of this subsection.";

and on page 28, line 25 by deleting the phrase "to the State" and substituting "to ~~the~~ State";

and on page 25, line 43 by deleting "or permits";

and on page 25, line 44 by inserting the following at the end of that line:
"If the lobbyist principal is an association or other organization, the lobbyist principal shall not be required to report under this subdivision any individual member of the association or other organization for which the lobbyist is directed to lobby by that lobbyist principal.";

and on page 26, line 2, by deleting "report of the" and substituting "report for the".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 961

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

H961-AST-164 [v.5]

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

Date _____,2010

Senator Clodfelter

moves to amend the bill on page 28, lines 35-38 by rewriting those lines to read:

"(9) ~~date~~Date, type and general description of the reasons for ~~of most recent~~each promotion, demotion, ~~transfer,~~disciplinary transfer within the previous five years, ~~suspension,~~ disciplinary suspension within the previous five years, separation, or other change in position ~~classification,~~classification with that department, agency, institution, commission, or bureau.";

and on page 29, lines 14-16 by rewriting those lines to read:

"(9) ~~date~~Date, type and general description of the reasons for ~~of most recent~~each promotion, demotion, ~~transfer,~~ disciplinary transfer within the previous five years, ~~suspension,~~ disciplinary suspension within the previous five years, separation, or other change in position ~~classification, and~~classification with that local board of education.";

and on page 29, lines 44-46 by rewriting those lines to read:

"(9) ~~date~~Date, type and general description of the reasons for ~~of most recent~~each promotion, demotion, ~~transfer,~~ disciplinary transfer within the previous five years, ~~suspension,~~ disciplinary suspension within the previous five years, separation, or other change in position ~~classification, and~~classification with that community college.";

and on page 30, lines 20-22 by rewriting those lines to read:

"(9) ~~date~~ Date, type and general description of the reasons for ~~of the most recent~~each promotion, demotion, ~~transfer,~~disciplinary transfer within the previous five years, ~~suspension,~~ disciplinary suspension within the previous five years, separation, or other change in position ~~classification; and~~classification with that area authority.";

and on page 30, lines 48-50 by rewriting those lines to read:

"(9) ~~date~~ Date, type and general description of the reasons for ~~of the most recent~~each promotion, demotion, ~~transfer,~~disciplinary transfer within the previous five years, ~~suspension,~~ disciplinary suspension within the previous five years, separation or other change in position ~~classification; and~~classification with that county.";

and on page 31, lines 25-27 by rewriting those lines to read:

"(9) ~~date~~Date, type and general description of the reasons for ~~of the most recent~~each promotion, demotion, ~~transfer,~~ disciplinary transfer within the previous five years, ~~suspension,~~ disciplinary suspension within the previous five years, separation, or other change in position ~~classification; and~~classification with that municipality.";

and on page 32, lines 3-5 by rewriting those lines to read:

"(9) ~~date~~ Date, type, and general description of the reasons for ~~of the most recent~~each promotion, demotion, ~~transfer,~~disciplinary transfer within the previous five years, ~~suspension,~~ disciplinary suspension within the previous five years, separation, or other change in position ~~classification; and~~classification with that authority.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 961

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

H961-AST-166 [v.2]

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

Date _____,2010

Senator _____

moves to amend the bill on page 14, line 25 by rewriting that line to read:

"**SECTION 4.(b)** G.S. 14-217 reads as rewritten:
"**§ 14-217. Bribery of officials.**
(a) If any person holding ~~office~~ office, or who has filed a notice of candidacy for or been nominated for such office, under the laws of this State who, except in payment of his legal salary, fees or perquisites, shall receive, or consent to receive, directly or indirectly, anything of value or personal advantage, or the promise thereof, for performing or omitting to perform any official act, which lay within the scope of his official authority and was connected with the discharge of his official and legal duties, or with the express or implied understanding that his official action, or omission to act, is to be in any degree influenced thereby, he shall be punished as a Class F felon.
(b) Indictments issued under these provisions shall specify:
(1) The thing of value or personal advantage sought to be obtained; and
(2) The specific act or omission sought to be obtained; and
(3) That the act or omission sought to be obtained lay within the scope of the defendant's official authority and was connected with the discharge of his official and legal duties.
(c) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 539, s. 1207.
(d) For purposes of this section, a thing of value or personal advantage shall include a campaign contribution made or received under Article 22A of Chapter 163 of the General Statutes.
SECTION 4.(c) This section becomes effective December 1, 2010, and applies to".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED " _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 961

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

H961-AST-169 [v.1]

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

Date _____,2010

Senator Clodfelter

moves to amend the bill on page 15, lines 9-10 by inserting the following between those lines:

"**SECTION 6.5.** G.S. 150B-38(a) is amended by adding a new subdivision to read:
"(6) The State Board of Elections in the administration of any investigation or audit under the provisions of Article 22A of Chapter 163 of the General Statutes.".

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. 5

H. B. No. 961 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) McKissick
Sen.)

1 moves to amend the bill on page 18, lines 28-32

2 ( ) WHICH CHANGES THE TITLE

3 by deleting those lines.

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-67 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-79[v.8]

Date _____,2010

Senator Stein

moves to amend the bill on page 4, line 45
by rewriting that line to read:
"charge upon which the DNA sample was based, unless the lesser-included offense is a misdemeanor not included in subsection (d) or (e) of this section."

And on page 7, line 38 by rewriting the line to read:
"(a) Any person ~~who, by virtue of employment, or official position,~~who has possession of, or"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-66 [v.1]

Comm. Sub. [YES]
Amends Title [YES]
S1383-CSSA-79[v.8]

Date _____,2010

Senator Clodfelter

moves to amend the bill on page 1, lines 3-5
by rewriting those lines to read:
"ARRESTED FOR COMMITTING CERTAIN OFFENSES, AND TO AMEND THE STATUTES THAT PROVIDE FOR A DNA SAMPLE UPON CONVICTION.

And on page 8, lines 37-44
By deleting those lines

And on page 8, lines 48-50
By rewriting those lines to read:
"**SECTION 15.** This act becomes effective January 1, 2011."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S 1

SENATE BILL 1393

Short Title:	Enhance Protection of Victims & Witnesses.	(Public)
Sponsors:	Senator McKissick.	
Referred to:	Appropriations/Base Budget.	

May 26, 2010

A BILL TO BE ENTITLED

AN ACT TO CREATE ENHANCED PROTECTIONS FOR VICTIMS AND WITNESSES BY ADDING AN EXCEPTION TO THE HEARSAY RULE THAT ALLOWS THE STATEMENT OF AN UNAVAILABLE WITNESS TO BE INTRODUCED INTO EVIDENCE IN CERTAIN CIRCUMSTANCES AND BY INCREASING THE CRIMINAL PENALTY FOR THE OFFENSE OF INTIMIDATING OR INTERFERING WITH A WITNESS AND TO APPROPRIATE FUNDS TO THE JUDICIAL DEPARTMENT TO ASSIST WITH IMPLEMENTATION COSTS.

The General Assembly of North Carolina enacts:

SECTION 1. Rule 804(b) of the North Carolina Rules of Evidence, as contained in G.S. 8C-1, is amended by adding a new subdivision to read:

"(6) Forfeiture by wrongdoing. – A statement is not excluded by the hearsay rule if the statement is offered against a party that has engaged or acquiesced in wrongdoing that was intended to and did procure the unavailability of a witness who was the declarant of the statement. The court shall determine the admissibility of the statement under this section by a preponderance of the evidence."

SECTION 2. G.S. 14-226(a) reads as rewritten:

"(a) If any person shall by threats, menaces or in any other manner intimidate or attempt to intimidate any person who is summoned or acting as a witness in any of the courts of this State, or prevent or deter, or attempt to prevent or deter any person summoned or acting as such witness from attendance upon such court, ~~he~~ the person shall be guilty of a ~~Class H felony.~~ Class C felony."

SECTION 3. There is appropriated from the General Fund to the Judicial Department the sum of ten thousand dollars ($10,000) for the 2010-2011 fiscal year to assist with the cost of implementing this act.

SECTION 4. This act becomes effective December 1, 2010, and applies to offenses committed on or after that date.

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 30, 2010

TO: Senator McKissick

FROM: Sarah Stone
Fiscal Research Division

RE: Proposed Senate Committee Substitute H789-CSST-96 [v1];
Enhance Protection of Victims & Witnesses

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
GENERAL FUND					
Correction					
Recurring	--	$300,730	$628,799	$656,138	$656,138
Judicial	$438,039	$739,621	$776,602	$815,432	$856,204
TOTAL EXPENDITURES:	$438,039	$1,040,351	$1,405,401	$1,471,570	$1,512,342
ADDITIONAL PRISON BEDS: (cumulative)*	--	11	23	24	24
POSITIONS: (cumulative)	--	4	9	10	10

**See Assumptions and Methodology*

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch.

EFFECTIVE DATE: Effective December 1, 2010, and applies to offenses committed on or after that date.

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY:

The proposed legislation amends G.S. 14-226(a), Intimidating or interfering with witnesses, to reclassify the offense from a Class H felony to a Class C felony. This act becomes effective December 1, 2010, and applies to offenses committed on or after that date.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

The proposed legislation amends G.S. 14-226(a), Intimidating or interfering with witnesses, to reclassify the offense from a Class H felony to a Class C felony. Currently, G.S. 14-226(a) provides that any person who intimidates or attempts to intimidate any person acting as a witness in any court, or any person who prevents or deters or attempts to prevent or deter any person summoned or acting as such witness from attendance in any court is guilty of a Class H felony.

In FY 2008-09, there were 17 Class H felony convictions under G.S. 14-226(a). Due to the small number of convictions, a more detailed impact projection using the Structured Sentencing Simulation Model would not be reliable. Impact on the prison population will occur if Class H convictions become Class C convictions under the proposed statute because of the higher rate of active sentences (35% for Class H compared to 100% for Class C) and longer average estimated time served (11 months for Class H compared to 80 months for Class C). Using threshold data, if these 17 convictions were reclassified from Class H to Class C, this would result in the need for 11 additional prison beds the first year and 23 additional prison beds the second year. In addition, since a period of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations; however, that impact is unknown.

Based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon or beyond.* Therefore, the number of

additional beds needed (row five) is *always equal to* the projected number of *additional inmates* resulting from a bill (row four). Rows four and five in the chart demonstrate the impact of the PCS for House Bill 789. As shown, the Sentencing Commission estimates that this specific legislation will add 24 inmates to the prison system by the end of FY 2014-15.

	June 30 2011	June 30 2012	June 30 2013	June 30 2014	June 30 2015
1. Projected No. of Inmates Under Current Structured Sentencing Act [1]	44,147	45,114	45,922	46,914	47,806
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	40,532	42,296	42,296	42,296	42,296
3. Projected No. of Beds Over/Under Inmate Population	-4,059	-2,818	-3,626	-4,618	-5,510
4. Projected No. of Additional Inmates Due to this Bill [2]	*N/A*	**11**	**23**	**24**	**24**
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill	*N/A*	**11**	**23**	**24**	**24**

POSITIONS: It is anticipated that by FY 2014-15, approximately 10 positions would be needed to supervise the additional inmates housed under this bill. This position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.5 inmates. This ratio is the combined average of the last seven prisons opened by DOC – two of the prisons were medium custody and five were close custody.

OPERATING: Operating costs are based on actual FY 2008-09 costs for each custody level, as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical, etc.), and administrative overhead costs for the Department and the Division of Prisons. A three percent (3.0%) annual inflation rate is applied to these base costs, as shown in the *recurring costs estimate in the "Fiscal Impact" table* (p.1).

Daily Inmate Operating Cost per Custody Level, FY 2008-09

Custody Level	Minimum	Medium	Close	Daily Average
Daily Cost Per Inmate	$59.17	$76.69	$85.68	$72.72

[1] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in January 2010.

[2] Criminal penalty bills effective December 1, 2010, should not affect prison population and bed needs until FY 2011-12 due to the lag time between offense-charge and sentencing - 6 months on average. No delayed effect is presumed for the Court System.

Judicial Branch

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

In calendar year 2009, approximately 243 defendants were charged with a total of 268 counts of the Class H felony under G.S. 14-226(a). It is possible that some of these charges were disposed as pleas to misdemeanors such as G.S. 14-277.1 "Communicating Threats," a Class 1 misdemeanor. If these charges were increased to Class C felonies, it is unlikely that prosecuting attorneys would accept pleas to misdemeanors at the same rate that they do for the Class H felony offense. The estimates below assume no changes in prosecutorial behavior. Therefore, the estimate may understate the nature of the impact.

Positions	FTE	*Dec. 1* FY2010-11	FY2011-12	FY 2012-13	FY2013-14	FY2014-15
Superior Court Judges	0.4	$45,474	$77,135	$80,992	$85,041	$89,293
Deputy Clerks	0.4	$11,699	$19,171	$20,130	$21,136	$22,193
Asst. District Attorneys	3.0	$201,132	$341,847	$358,939	$376,886	$395,731
Victim Witness / Legal Assts.	2.0	$77,366	$120,702	$126,737	$133,074	$139,728
Court Reporters	0.4	$17,954	$28,820	$30,261	$31,774	$33,363
Subtotal Positions	6.2	$353,624	$587,675	$617,059	$647,912	$680,307
Jury Fees		$12,857	$23,142	$24,299	$25,514	$26,790
Subtotal Courts	**6.2**	**$366,481**	**$610,817**	**$641,358**	**$673,426**	**$707,097**
Indigent Defense		$71,558	$128,804	$135,244	$142,006	$149,107
Grand Total	**6.2**	**$438,039**	**$739,621**	**$776,602**	**$815,432**	**$856,204**

Due to the December 1 effective date of the bill, the costs above include seven months of costs for FY 2010-11. All nonrecurring costs for new positions would occur during that first fiscal year. For later years, recurring costs are increased by 5 percent annually to adjust for caseload, inflation, and other growth. The cumulative impact of workload for all positions involved would exceed 6 FTE positions. Because the impact is the equivalent of less than 0.5 FTE for several position types, the costs provided for those positions are for the value of the time that would be spent by existing personnel. However, due to existing shortages, any increase in workload could not be absorbed by existing staff.

In FY 2008-09, a typical felony case took approximately 203 days to dispose in Superior Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 748
PROPOSED SENATE COMMITTEE SUBSTITUTE H748-CSST-99 [v.4]

6/28/2010 8:28:19 PM

Short Title: Citizens United Response. (Local)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO DEFINE COORDINATION AND COORDINATED EXPENDITURE; TO REQUIRE REPORTING OF AND DISCLOSURES ON INDEPENDENT EXPENDITURES FOR POLITICAL ADVERTISEMENTS THAT IS THE SAME AS THAT OF POLITICAL COMMITTEES; TO REPEAL ARTICLES 22E, 22F, 22G AND 22H OF CHAPTER 163 OF THE GENERAL STATUTES; AND TO CLARIFY THE EXEMPTION OF POLITICAL EXPENDITURES TO THE DEFINITION OF "GIFT" UNDER THE STATE GOVERNMENT ETHICS ACT AND THE MISCELLANEOUS REPORTING UNDER CHAPTER 120C.

The General Assembly Of North Carolina enacts:

SECTION 1. G.S. 163-278.6 reads as rewritten:

"**§ 163-278.6. Definitions.**

When used in this Article:

(1) The term "board" means the State Board of Elections with respect to all candidates for State, legislative, and judicial offices and the county or municipal board of elections with respect to all candidates for county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda and the county or municipal board of elections conducting all local referenda.

(2) The term "broadcasting station" means any commercial radio or television station or community antenna radio or television station. Special definitions of "radio" and "television" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(3) The term "business entity" means any partnership, joint venture, joint-stock company, company, firm, or any commercial or industrial establishment or enterprise.

(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has taken positive action for the purpose of bringing about that individual's nomination or election to public office. Examples of positive action include:

a. Filing a notice of candidacy or a petition requesting to be a candidate,

b. Being certified as a nominee of a political party for a vacancy,

c. Otherwise qualifying as a candidate in a manner authorized by law,

d. Making a public announcement of a definite intent to run for public office in a particular election, or

e. Receiving funds or making payments or giving the consent for anyone else to receive funds or transfer anything of value for the purpose of bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value.

Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held. Special definitions of "candidate" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(5) The term "communications media" or "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, newspaper inserts, and any person or individual whose business is polling public opinion, analyzing or predicting voter behavior or voter preferences. Special definitions of "print media," "radio," and "television" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(5h) The term "coordination" means in concert or cooperation with, or at the request or suggestion of.

(5g) The term "coordinated expenditure" means an expenditure that is made in concert or cooperation with, or at the request or suggestion of, a candidate, a candidate campaign committee as defined in G.S. 163-278.38Z(3), the agent of the candidate, or the agent of the candidate campaign committee. An expenditure for the distribution of information relating to a candidate's campaign, positions, or policies, that is obtained through publicly available resources, including a candidate campaign committee, is not a coordinated expenditure if it is not made in concert or cooperation with, or at the request or suggestion of, a candidate, the candidate campaign committee, the agent of the candidate, or the agent of the candidate campaign committee.

(6) The terms "contribute" or "contribution" mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, made to, or in coordination with, a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, or other obligation to make a contribution. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a contribution from that person or entity. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or

referendum committee. The term "contribution" does not include an "independent expenditure." If:

a. Any individual, person, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any disbursement for any electioneering communication, as defined in ~~G.S. 163-278.80(2) and (3) and G.S. 163-278.90(2) and (3);~~ this section; and

b. That disbursement is coordinated with a candidate, an authorized political committee of that candidate, a State or local political party or committee of that party, or an agent or official of any such candidate, party, or committee

that disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party.

(7) The term "corporation" means any corporation established under either domestic or foreign charter, and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner or a joint venturer. The term applies regardless of whether the corporation does business in the State of North Carolina.

(7a) The term "costs of collection" means monies spent by the State Board of Elections in the collection of the penalties levied under this Article to the extent the costs do not constitute more than fifty percent (50%) of the civil penalty. The costs are presumed to be ten percent (10%) of the civil penalty unless otherwise determined by the State Board of Elections based on the records of expenses incurred by the State Board of Elections for its collection procedures.

(7b) The term "day" means calendar day.

(7c) The term "election cycle" means the period of time from January 1 after an election for an office through December 31 after the election for the next term of the same office. Where the term is applied in the context of several offices with different terms, "election cycle" means the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year.

(8) The term "election" means any general or special election, a first or second primary, a run-off election, or an election to fill a vacancy. The term "election" shall not include any local or statewide referendum.

(8a) The term "enforcement costs" means salaries, overhead, and other monies spent by the State Board of Elections in the enforcement of the penalties provisions of this Article, including the costs of investigators, attorneys, travel costs for State Board employees and its attorneys, to the extent the costs do not constitute more than fifty percent (50%) of the sum levied for the enforcement costs and civil late penalty.

(8j) The term "electioneering communication" means any broadcast, cable, or satellite communication, or mass mailing, or telephone bank that has all the following characteristics:

a. Refers to a clearly identified candidate for elected office.

b. Is aired or transmitted within 40 days of an election for that office.

c. May be received by either:

1. Seventy five percent (75%) or more of registered voters, cumulative per election, in that election if in the form of broadcast.
2. Fifty percent (50%) of more of the registered voters, cumulative per election, in that election if in the form of cable or satellite.
3. 20,000 or more households, cumulative per election, in a statewide election or 2,500 households, cumulative per election, in any other election if in the form of mass mailing or telephone bank.

(8k) The term "electioneering communication" does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless those facilities are owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under this Article.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation or a solicitation of others as defined in G.S. 120C-100(a)(13) properly reported under Chapter 120C of the General Statutes.

e. A communication that meets all of the following criteria:
   1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.
   2. Does not take a position on the candidate's character or qualifications and fitness for office.
   3. Proposes a commercial transaction.

f. A public opinion poll conducted by a news medium, as defined in G.S. 8-53.11(a)(3), or conducted by an organization whose primary purpose is to conduct or publish public opinion polls.

g. A communication made by a news medium, as defined in G.S. 8-53.11(a)(3), if the communication is in print.

(9) The terms "expend" or "expenditure" mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, or other obligation to make an expenditure, to support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a contribution from that person or entity. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term

"expenditure" also includes any payment or other transfer made by a candidate, political committee, or referendum committee.

(9a) The term "independently expend" or "independent expenditure" means an expenditure to support or oppose the nomination or election of one or more clearly identified candidates that is ~~made without consultation or coordination with a candidate or agent of a candidate whose nomination or election the expenditure supports or whose opponent's nomination or election the expenditure opposes.~~ not a coordinated expenditure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. A contribution is not an independent expenditure. As applied to referenda, the term "independent expenditure" applies if consultation or coordination does not take place with a referendum committee that supports a ballot measure the expenditure supports, or a referendum committee that opposes the ballot measure the expenditure opposes.

(10) The term "individual" means a single individual or more than one individual.

(11) The term "insurance company" means any person whose business is making or underwriting contracts of insurance, and includes mutual insurance companies, stock insurance companies, and fraternal beneficiary associations.

(12) The term "labor union" means any union, organization, combination or association of employees or workmen formed for the purposes of securing by united action favorable wages, improved labor conditions, better hours of labor or work-related benefits, or for handling, processing or righting grievances by employees against their employers, or for representing employees collectively or individually in dealings with their employers. The term includes any unions to which Article 10, Chapter 95 applies.

(12k) The term "mass mailing" means any mailing by United States mail or facsimile to 20,000 or more households, cumulative per election, in a statewide election or 2,500 households, cumulative per election, in any other election.

(13) The term "person" means any business entity, corporation, insurance company, labor union, or professional association.

(14) The term "political committee" means a combination of two or more individuals, such as any person, committee, association, organization, or other entity that makes, or accepts anything of value to make, contributions or expenditures and has one or more of the following characteristics:

a. Is controlled by a candidate;

b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;

c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b); or

d. Has the major purpose to support or oppose the nomination or election of one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

If the entity qualifies as a "political committee" under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a political committee if it receives contributions or makes expenditures or maintains assets or

liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

The term "political committee" includes the campaign of a candidate who serves as his or her own treasurer.

Special definitions of "political action committee" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(15) The term "political party" means any political party organized or operating in this State, whether or not that party is recognized under the provisions of G.S. 163-96. A special definition of "political party organization" that applies only in Part 1A of this Article is set forth in G.S. 163-278.38Z.

(16) Repealed by Session Laws 1999-31, s. 4.

(17) The term "professional association" means any trade association, group, organization, association, or collection of persons or individuals formed for the purposes of advancing, representing, improving, furthering or preserving the interests of persons or individuals having a common vocation, profession, calling, occupation, employment, or training.

(18) The term "public office" means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or nonpartisan.

(18a) The term "referendum" means any question, issue, or act referred to a vote of the people of the entire State by the General Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term "referendum" includes any type of municipal, county, or special district referendum and any initiative or referendum authorized by a municipal charter or local act. A recall election shall not be considered a referendum within the meaning of this Article.

(18b) The term "referendum committee" means a combination of two or more individuals such as a committee, association, organization, or other entity or a combination of two or more business entities, corporations, insurance companies, labor unions, or professional associations such as a committee, association, organization, or other entity the primary purpose of which is to support or oppose the passage of any referendum on the ballot. If the entity qualifies as a "referendum committee" under this subdivision, it continues to be a referendum committee if it receives contributions or makes expenditures or maintains assets or liabilities. A referendum committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

(18k) The term "telephone bank" means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals.

(19) The term "treasurer" means an individual appointed by a candidate, political committee, or referendum committee as provided in G.S. 163-278.7 or G.S. 163-278.40A."

SECTION 2. G.S. 163-278.12 reads as rewritten:

"**§ 163-278.12. Special reporting of contributions and independent expenditures.**

(a) Subject to G.S. 163-278.39 and G.S. 163-278.14, individuals and other entities not otherwise prohibited from doing so may make independent expenditures. In the event an individual or other entity making independent expenditures but not otherwise required to report them makes independent expenditures in excess of one hundred dollars ($100.00), that individual or entity shall file a statement of such independent expenditure with the appropriate board of elections in the manner prescribed by the State Board of Elections.

(b) Any entity other than an individual that is permitted to make contributions but is not otherwise required to report them shall report each contribution in excess of one hundred dollars ($100.00) with the appropriate board of elections in the manner prescribed by the State Board of Elections.

(c) In assuring compliance with subsections (a) and (b) of this section, the State Board of Elections shall require the identification of each entity making a ~~donation~~ transfer of more than one hundred dollars ($100.00) to the entity filing the report if the ~~donation~~ transfer was made ~~for the purpose of furthering~~to further the reported independent expenditure or contribution.

(d) Contributions or independent expenditures required to be reported under this section shall be reported within 30 days after they exceed one hundred dollars ($100.00) or 10 days before an election the contributions or independent expenditures affect, whichever occurs earlier.

(e) The State Board of Elections shall require subsequent reporting of independent expenditures according to the same schedule required of political committees under G.S. 163-278.9(a). An individual or person that makes an independent expenditure shall disclose by report to the State Board of Elections within 48 hours of incurring an expense of ten thousand dollars ($10,000) or more before an election but after the period covered by the last report due before that election.

(f) For the purposes of subsection (c) of this section, a transfer is deemed to have been made to further an independent expenditure or contribution if any of the following apply to that transfer:

(1) The transferor designates, requests, or suggests that the transfer be used for an independent expenditure or multiple independent expenditures, or for contributions, and the transferee agrees to so use the transfer.

(2) The transferee or an agent of the transferee expressly solicited the transferor for a transfer for making or paying for an independent expenditure or contribution.

(3) The transferor and the transferee engaged in substantial written or oral discussion regarding the transferor making, donating, or paying for an independent expenditure or contribution.

(4) The transferor or the transferee knew or had reason to know of the transferee's intent to make independent expenditures or contributions with the transfer.

(5) The transferor or the transferee made an independent expenditure or contribution during the two-year period that ends on the date on which the transfer was made.

A transfer shall not be deemed to be made to further an independent expenditure or contribution if the transfer was a commercial transaction occurring in the ordinary course of business between the transferor and the transferee unless there is affirmative evidence that the amounts were transferred to further an independent expenditure or contribution. In determining the amount of a transfer that was made to further any particular independent expenditure, there shall be excluded any amount that was designated by the transferor with respect to a different election than the election that is the subject of the independent expenditure covered by the report.

(g) All reports required by this section shall be filed according to rules adopted by the State Board of Elections. If the expense incurred is greater than ten thousand dollars ($10,000.00), the report shall be filed electronically. The State Board of Elections shall provide the software necessary to file the electronic report to any individual or person required to file an electronic report at no cost to that individual or person."

SECTION 3. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.12C. Special reporting of electioneering communications.**

(a) Every individual or person that incurs an expense for the direct costs of producing or airing electioneering communications aggregating in excess of five thousand dollars ($5,000.00) shall file the following reports with the State Board:

(1) The identification of the individual or person incurring the expense, of any individual or person sharing or exercising direction or control over the activities of that individual or person, and of the custodian of the books and accounts of the individual or person incurring the expense.

(2) The principal place of business of the person incurring the expense, if not an individual.

(3) The amount of each expense incurred during the period covered by the statement and the identification of the individual or person to whom the expense was incurred.

(4) The elections to which the electioneering communications pertain, if any, and the names, if known, of the candidates identified or to be identified.

(5) The names and addresses of all entities that transferred, to further an electioneering communication or electioneering communications, funds or anything of value whatsoever in an aggregate amount of more than one thousand dollars ($1,000) during the reporting period. If the transferor is an individual, the statement shall also contain the principal occupation of the transferor. The "principal occupation of the transferor" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(b) The initial report shall be filed with the State Board no later than the tenth day following the day the individual or person incurs an expense for the direct costs of producing or airing an electioneering communication. The State Board shall require subsequent reporting according to the same schedule required of political committees under G.S. 163-278.9(a). An individual or person that produces or airs an electioneering communication shall disclose by report to the State Board within 48 hours of incurring an expense of ten thousand dollars ($10,000) or more before an election but after the period covered by the last report due before that election.

(c) For the purposes of subdivision (a)(5) of this section, funds or anything of value is deemed to have been transferred to further an electioneering communication if any of the following apply to that transfer:

(1) The transferor designates, requests, or suggests that the transfer be used for an electioneering communication or electioneering communications and the transferee agrees to so use the transfer.

(2) The transferee or an agent of the transferee expressly solicited the transferor for a transfer for making or paying for an electioneering communication.

(3) The transferor and the transferee engaged in substantial written or oral discussion regarding the transferor making, donating, or paying for an electioneering communication.

(4) The transferor or the transferee knew or had reason to know of the transferee's intent to make electioneering communications with the transfer.

(5) The transferor or the transferee made electioneering communication during the two-year period that ends on the date on which the transfer was made.

Transferring funds or anything of value shall not be deemed to be made to further an electioneering communication if the transfer was a commercial transaction occurring in the ordinary course of business between the transferor and the recipient unless there is affirmative evidence that the funds or things of value were provided to further an electioneering communication. In determining the amount of a transfer that was made to further any particular electioneering communication, there shall be excluded any amount that was designated by the transferor with respect to a different election than the election that is the subject of the electioneering communication covered by the report.

(d) All reports required by this section shall be filed according to rules adopted by the State Board. If the expense incurred is greater than ten thousand dollars ($10,000.00), the report shall be filed electronically. The State Board shall provide the software necessary to file the electronic report to any individual or person required to file an electronic report at no cost to that individual or person."

SECTION 4. G.S. 163-278.17 reads as rewritten:

"**§ 163-278.17. Statements of media outlets ~~receiving campaign expenditures.~~regarding political advertising.**

(a) Repealed by Session Laws 1985, c. 183, s. 1.

(b) Each media outlet shall require written authority for each expenditure from each candidate, treasurer or individual making or authorizing an expenditure. A candidate may authorize advertisement paid for by a treasurer appointed by the candidate. All written authorizations of expenditures signed by a candidate, treasurer or individual shall be deemed public records and copies of ~~said~~ those written authorizations shall be available for inspection during normal business hours at the office(s) of the media outlet making the publication or broadcast nearest to the place(s) of publication or broadcast.

(c) Repealed by Session Laws 1985, c. 183, s. 2.

(d) Each media outlet shall require written authority for each independent expenditure or electioneering communication from each individual or person making or authorizing an independent expenditure or electioneering communication. All written authorizations of independent expenditures or electioneering communications shall be deemed public records and copies of those written authorizations shall be available for inspection during normal business hours at the office(s) of the media outlet making the publication or broadcast nearest to the place(s) of publication or broadcast. The written authorization shall include all of the following:

(1) The name and address of the individual or person making or authorizing the independent expenditure or electioneering communication.

(2) The name and address of the registered agent, if the person is doing business in North Carolina.

(3) The information required by G.S. 163-278.39(a).

(e) All written authorizations under this section involving an expenditure, independent expenditure, or electioneering communication with a value greater than ten thousand dollars ($10,000.00) in a statewide, legislative, or judicial race shall be electronically communicated to the State Board and shall be made publicly available by the State Board.

SECTION 5. G.S. 163-278.19 reads as rewritten:

"**§ 163-278.19. Violations by corporations, business entities, labor unions, professional associations and insurance companies.**

(a) Except as provided in subsections (a2), (b), (d), (e), (f), and (g) of this section it shall be unlawful for any corporation, business entity, labor union, professional association or insurance company directly or ~~indirectly:~~indirectly do any of the following:

(1) To make any contribution to a candidate or political ~~committee or to make any expenditure to support or oppose the nomination or election of a clearly identified candidate;~~committee.

(2) To pay or use or offer, consent or agree to pay or use any of its money or property for any contribution to a candidate or political ~~committee or for any expenditure to support or oppose the nomination or election of a clearly identified candidate; or~~committee.

(3) To compensate, reimburse, or indemnify any person or individual for money or property so used or for any contribution or expenditure so ~~made;~~made.

~~and it~~It shall also be unlawful for any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company to aid, abet, advise or consent to any such ~~contribution or expenditure,~~contribution, or for any person or individual to solicit or knowingly receive any such ~~contribution or expenditure.~~ contribution. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. Any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company aiding or abetting in any contribution ~~or expenditure~~ made in violation of this section shall be guilty of a Class 2 misdemeanor, and shall in addition be liable to such corporation, business entity, labor union, professional association or insurance company for the amount of such contribution ~~or expenditure,~~ and the same may be recovered of him upon suit by any stockholder or member thereof.

(a1) A transfer of funds shall be deemed to have been a contribution ~~or expenditure~~ made indirectly if it is made to any committee or political party account, whether inside or outside this State, with the intent or purpose of being exchanged in whole or in part for any other funds to be contributed or expended in an election for North Carolina office or to offset any other funds contributed or expended in an election for North Carolina office.

(a2) Proceeds of loans made in the ordinary course of business by financial institutions may be used for contributions made in compliance with this Chapter. Financial institutions may also grant revolving credit to political committees and referendum committees in the ordinary course of business.

(b) It shall, however, be lawful for any corporation, business entity, labor union, professional association or insurance company to communicate with its employees, stockholders or members and their families on any subject; to conduct nonpartisan registration and get-out-the-vote campaigns aimed at their employees, stockholders, or members and their families; or for officials and employees of any corporation, insurance company or business entity or the officials and members of any labor union or professional association to establish, administer, contribute to, and to receive and solicit contributions to a separate segregated fund to be utilized for political purposes, and those individuals shall be deemed to become and be a political committee as that term is defined in G.S. 163-278.6(14) or a referendum committee as defined in G.S. 163-278.6(18b); provided, however, that it shall be unlawful for any such fund to make a contribution or expenditure by utilizing contributions secured by physical force, job discrimination, financial reprisals or the threat of force, job discrimination or financial reprisals, or by dues, fees, or other moneys required as a condition of membership or employment or as a requirement with respect to any terms or conditions of employment, including, without limitation, hiring, firing, transferring, promoting, demoting, or granting seniority or employment-related benefits of any kind, or by moneys obtained in any commercial transaction whatsoever.

(c) A violation of this section is a Class 2 misdemeanor. In addition, the acceptance of any contribution, ~~expenditure, payment,~~ reimbursement, ~~indemnification, or anything of value~~ or indemnification under subsection (a) shall be a Class 2 misdemeanor.

(d) Whenever a candidate or treasurer is an officer, director, stockholder, attorney, agent, or employee of any corporation, business entity, labor union, professional association or insurance company, and by virtue of his position therewith uses office space and communication facilities of the corporation, business entity, labor union, professional association or insurance company in the normal and usual scope of his employment, the fact that the candidate or treasurer receives telephone calls, mail, or visits in such office which relates to activities prohibited by this Article shall not be considered a violation under this section.

(e) Notwithstanding the prohibitions specified in this Article and Article 22 of this Chapter, a political committee organized under provisions of this Article shall be entitled to receive and the corporation, business entity, labor union, professional association, or insurance company designated on the committee's organizational report as the parent entity of the employees or members who organized the committee is authorized to give reasonable administrative support that shall include record keeping, computer services, billings, mailings to members of the committee, membership development, fund-raising activities, office supplies, office space, and such other support as is reasonably necessary for the administration of the committee.

The approximate cost of any reasonable administrative support shall be submitted to the committee, in writing, and the committee shall include that cost on the report required by G.S. 163-278.9(a)(6). Also included in the report shall be the approximate allocable portion of the compensation of any officer or employee of the corporation, business entity, labor union, professional association, or insurance company who has devoted more than thirty-five percent (35%) of his time during normal business hours of the corporation, business entity, labor union, professional association, or insurance company during the period covered by the required report. The approximate cost submitted by the parent corporation, business entity, labor union, professional association, or insurance company shall be entered on the committee's report as the final entry on its list of "contributions" and a copy of the written approximate cost received by it shall be attached.

The reasonable administrative support given by a corporation, business entity, labor union, professional association, or insurance company shall be designated on the books of the corporation, business entity, labor union, professional association, or insurance company as such and may not be treated by it as a business deduction for State income tax purposes.

(f) This section does not prohibit a contribution ~~or independent expenditure~~ by an entity that:

(1) Has as an express purpose promoting social, educational, or political ideas and not to generate business income;

(2) Does not have shareholders or other persons which have an economic interest in its assets and earnings; and

(3) Was not established by a business corporation, by an insurance company, by a business entity, including, but not limited to, those chartered under Chapter 55, Chapter 55A, Chapter 55B, or Chapter 58 of the General Statutes, by a professional association, or by a labor union and does not receive substantial revenue from such entities. Substantial revenue is rebuttably presumed to be more than ten percent (10%) of total revenues in a calendar year.

(g) If a political committee has as its only purpose accepting contributions and making expenditures to influence elections, and that political committee incorporates as a nonprofit corporation to shield its participants from liability created outside this Chapter, that political committee is not considered to be a corporation for purposes of this section. Incorporation of a political committee does not relieve any individual, person, or other entity of any liability, duty, or obligation created pursuant to any provision of this Chapter. To obtain the benefits of this subsection, an incorporating political committee must state exactly the following language as

the only purpose for which the corporation can be organized: "to accept contributions and make expenditures to influence elections as a political committee pursuant to G.S. 163-278.6(14) only." No political committee shall do business as a political committee after incorporation unless it has been certified by the State Board of Elections as being in compliance with this subsection."

SECTION 6. G.S. 163-278.22 is amended by adding a new subdivision to read:

"(15) To establish a process for determination as to whether communication is an expenditure, independent expenditure, or electioneering communication prior to the airing or distribution of that communication when so requested by an individual or person producing a communication. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall require a written determination by the Executive Director to include stated findings and an opportunity for immediate appeal to the State Board of the determination by the Executive Director."

SECTION 7. G.S. 163-278.38Z(7) reads as rewritten:

"(7) "Print media" means billboards, cards, newspapers, newspaper inserts, magazines, mass mailings, pamphlets, fliers, periodicals, and outdoor advertising facilities. ~~A "mass mailing" is a mailing with more than 500 pieces.~~"

SECTION 8. G.S. 163-278.39 reads as rewritten:

"**§ 163-278.39. Basic disclosure requirements for all political ~~campaign~~ advertisements.**

(a) Basic Requirements. – It shall be unlawful for any sponsor to sponsor an advertisement in the print media or on radio or television that constitutes an ~~expenditure~~ expenditure, independent expenditure, electioneering communication, or contribution required to be disclosed under this Article unless all the following conditions are met:

(1) It bears the legend or includes the statement: "Paid for by _____ [Name of candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor]." In television advertisements, this disclosure shall be made by visual legend.

(2) The name used in the labeling required in subdivision (1) of this subsection is the name that appears on the statement of organization as required in ~~G.S. 163-278.7(b)(1).~~G.S.163-278.7(b)(1) or G.S. 163-278.12C(a).

(3) Repealed by Session Laws 2001-353, s. 5, effective August 10, 2001.

(4) The sponsor states in the advertisement its position for or against a ballot measure, provided that this subdivision applies only if the advertisement is made for or against a ballot measure.

(5) In a print media advertisement supporting or opposing the nomination or election of one or more clearly identified candidates, the sponsor states whether it is authorized by a candidate. The visual legend in the advertisement shall state either "Authorized by [name of candidate], candidate for [name of office]" or "Not authorized by a candidate." This subdivision does not apply if the sponsor of the advertisement is the candidate the advertisement supports or that candidate's campaign committee.

(6) In a print media advertisement that identifies a candidate the sponsor is opposing, the sponsor discloses in the advertisement the name of the candidate who is intended to benefit from the advertisement. This subdivision applies only when the sponsor coordinates or consults about the

advertisement or the expenditure for it with the candidate who is intended to benefit.

(7) In a print media advertisement supporting or opposing the nomination or election of one or more clearly identified candidates that is an independent expenditure, the sponsor discloses the names of the individuals or persons making the five largest transfers to the sponsor within the six month period prior to the purchase of the advertisement if those transfers are required to be reported under G.S. 163-278.12.

(8) In a print media advertisement that is an electioneering communication, the sponsor discloses the names of the individuals or person making the five largest transfers to the sponsor within the six month period prior to the purchase of the advertisement if those transfers are required to be reported under G.S. 163-278.12C.

If an advertisement described in this section is jointly sponsored, the disclosure statement shall name all the sponsors.

(b) Size Requirements. – In a print media advertisement covered by subsection (a) of this section, the height of all disclosure statements required by that subsection shall constitute at least five percent (5%) of the height of the printed space of the advertisement, provided that the type shall in no event be less than 12 points in size. In an advertisement in a newspaper or a newspaper insert, the total height of the disclosure statement need not constitute five percent of the printed space of the advertisement if the type of the disclosure statement is at least 28 points in size. If a single advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face. In a television advertisement covered by subsection (a) of this section, the visual disclosure legend shall constitute 32 scan lines in size. In a radio advertisement covered by subsection (a) of this section, the disclosure statement shall last at least two seconds, provided the statement is spoken so that its contents may be easily understood.

(c) Misrepresentation of Authorization. – Notwithstanding G.S. 163-278.27(a), any candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor making an advertisement in the print media or on radio or television bearing any legend required by subsection (a) of this section that misrepresents the sponsorship or authorization of the advertisement is guilty of a Class 1 misdemeanor."

SECTION 9. G.S. 163-278.39A reads as rewritten:

"**§ 163-278.39A. Disclosure requirements for television and radio advertisements supporting or opposing the nomination or election of one or more clearly identified candidates.**

(a) Expanded Disclosure Requirements. – Any political campaign advertisement on radio or television shall comply with the expanded disclosure requirements set forth in this section. To the extent that it provides the same information required by G.S. 163-278.39, a statement made pursuant to this section satisfies the requirements of G.S. 163-278.39 for the same advertisement.

(b) Disclosure Requirements for Television. –

(1) Candidate advertisements on television. – Television advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate and containing at least the following words: "I am (or "This is____") [name of candidate], candidate for [name of office], and I (or "my campaign____") sponsored this ad." This subdivision applies only to an advertisement that mentions the name of, shows the picture of, transmits the voice of, or

otherwise refers to an opposing candidate for the same office as the sponsoring candidate.

(2) Political party advertisements on television. – Television advertisements purchased by a political party organization supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: "The [name of political party organization] sponsored this ad opposing/supporting [name of candidate] for [name of office]." The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

(3) Political action committee advertisements on television. – Television advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: "The [name of political action committee] political action committee sponsored this ad opposing/supporting [name of candidate] for [name of office]." The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1).

(4) Advertisements on television by an individual. – Television advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and I sponsored this advertisement opposing/supporting [name of candidate] for [name of office]."

(5) Advertisements on television by another sponsor. – Television advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual which supports or opposes the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] sponsored this ad. <u>If the sponsor is a corporation that has the purpose of promoting social, educational, or political ideas, the advertisement shall also include a legible listing on the screen of the individuals or persons making the five largest transfers to the sponsor within the six month period prior to the purchase of the advertisement if those transfers are required to be reported under G.S. 163-278.12."</u>

(6) All advertisements on television. – In any television advertisement described in subdivisions (1) through (4) of this subsection, an unobscured, full-screen picture containing the disclosing individual, either in photographic form or through the actual appearance of the disclosing individual on camera, shall be featured throughout the duration of the disclosure statement.

<u>(7) Electioneering communications on television. – Television advertisements purchased by an individual that are electioneering communications shall include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and I sponsored this advertisement opposing/supporting [name of candidate] for [name of</u>

office]." Television advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual that are electioneering communications shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] sponsored this ad. If the sponsor is a corporation that has the purpose of promoting social, educational, or political ideas, the advertisement shall also include a legible listing on the screen of the individuals or persons making the five largest transfers to the sponsor within the six month period prior to the purchase of the advertisement if those transfers are required to be reported under G.S. 163-278.12C.

(c) Disclosure Requirements for Radio. –

(1) Candidate advertisements on radio. – Radio advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate and containing at least the following words: "I am (or "This is____") [name of candidate], candidate for [name of office], and this ad was paid for (or "sponsored" or "furnished") by [name of candidate campaign committee that paid for the advertisement]." This subdivision applies only to an advertisement that mentions the name of, transmits the voice of, or otherwise refers to an opposing candidate for the same office as the sponsoring candidate.

(2) Political party advertisements on radio. – Radio advertisements purchased by a political party organization supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: "This ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by [name of political party]." The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

(3) Political action committee advertisements on radio. – Radio advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: "This ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by [name of political action committee] political action committee." The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required by G.S. 163-278.7(b)(1).

(4) Advertisements on radio by an individual. – Radio advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and this ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by me."

(5) Advertisements on radio by another sponsor. – Radio advertisements purchased by a sponsor other than a candidate, a candidate campaign

committee, a political party organization, a political action committee, or an individual which supports or opposes the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] paid for (or "sponsored" or "furnished") this ad. If the sponsor is a corporation that has the purpose of promoting social, educational, or political ideas, the advertisement shall also include an aural disclosure of the individuals or persons making the two largest transfers to the sponsor within the period of six months prior to the purchase of the advertisement if those transfers are required to be reported under G.S. 163-278.12.

(6) Electioneering communication on the radio. – Radio advertisements purchased by an individual that are electioneering communications shall include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and this ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by me." Radio advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual that are electioneering communications shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] paid for (or "sponsored" or "furnished") this ad. If the sponsor is a corporation that has the purpose of promoting social, educational, or political ideas, the advertisement shall also include an aural disclosure of the individuals or persons making the two largest transfers or provisions to the sponsor within the period of six months prior to the purchase of the advertisement if those transfers are required to be reported under G.S. 163-278.12C.

(d) Placement of Disclosure Statement in Television and Radio Advertisements. – In advertisements on television, a sponsor may place the disclosure statement required by this section at any point during the advertisement, except if the duration of the advertisement is more than five minutes, the disclosure statement shall be made both at the beginning and end of the advertisement. The sponsor may provide the oral disclosure statement required by this section at the same time as the visual disclosure required under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, is shown. But any visual disclosure legend shall be at least 32 scan lines in size. For advertisements on radio, the placement of the oral disclosure statement shall comply with the requirements of the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

(e) Choice of Supporting or Opposing a Candidate. – In its oral disclosure statement, a sponsoring political party organization, political action committee, individual, or other noncandidate sponsor shall choose either to identify an advertisement as supporting or opposing the nomination or election of one or more clearly identified candidates.

(e1) Joint Sponsors. – If an advertisement described in this section is jointly sponsored, the disclosure statement shall name all the sponsors and the disclosing individual shall be one of those sponsors. If a candidate is one of the sponsors, that candidate shall be the disclosing individual, and if more than one candidate is the sponsor, at least one of the candidates shall be the disclosing individual.

(f) Legal Remedy. – Pursuant to the conditions established in subdivisions (1), (2), and (3) of this subsection, a candidate for an elective office who complied with the television and radio disclosure requirements throughout that candidate's entire campaign shall have a monetary remedy in a civil action against (i) an opposing candidate or candidate committee

whose television or radio advertisement violates these disclosure requirements and (ii) against any political party organization, political action committee, individual, or other sponsor whose advertisement for that elective office violates these disclosure requirements:

(1) Any plaintiff candidate in a statewide race in an action under this section shall complete and file a Notice of Complaint Regarding Failure to Disclose on Television or Radio Campaign Advertising with the State Board of Elections after the airing of the advertisement but no later than the first Friday after the Tuesday on which the election occurred. Candidates in nonstatewide races may file the notice during the same time period with one county board of elections within the electoral area in which they are candidates. The timely filing of this notice preserves the candidate's right to bring an action in superior court any time within 90 days after the election. A candidate shall bring the civil action in the county where the candidate filed the notice.

(2) Upon receiving a favorable verdict in accordance with existing law, the plaintiff candidate shall receive a monetary award of actual damages. The price of actual damages shall be calculated as the total dollar amount of television and radio advertising time that was aired and that the plaintiff candidate correctly identifies as being in violation of the disclosure requirements of this section.

The plaintiff candidate shall also receive an award that trebles the amount of actual damages if:

a. The plaintiff candidate can establish having notified or attempted to notify the sponsor of the advertisement properly by return-receipt mail about the failure of a particular advertisement or advertisements to comply with the disclosure requirements of this section, and

b. After the notice or attempted notice, the advertisement continued to be aired.

The treble damages shall be calculated from the date on which the return-receipt notice was accepted or rejected by a defendant sponsoring candidate or candidate committee, political party organization, political action committee, or individual. The plaintiff candidate or candidate committee shall send a copy of any return-receipt mailing to the relevant board of elections as provided in subdivision (1) of this subsection within five days after the notice is returned to the possession of the candidate or candidate committee.

The plaintiff candidate may bring the civil action personally or authorize his or her candidate campaign committee to bring the civil action.

(3) A candidate who violates the disclosure requirements of State law in this section and that candidate's campaign committee shall be jointly and severally liable for the payment of damages and attorneys' fees. If the candidate is held personally liable for any payment of damages or attorneys' fees, the candidate shall not use or be reimbursed by funds from the candidate's campaign committee in paying any amount.

(g) Relation to the Communications Act of 1934. – Television advertisements by a sponsor supporting or opposing the nomination or election of one or more clearly identified candidates shall comply with the oral disclosure requirements under State law in this section. Those advertisements shall also comply with disclosure requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317 by use of visual legends. The content of those visual legends is specified by the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, and G.S. 163-278.39(a)(1). The size of those visual legends is determined by

G.S. 163-278.39(b), which satisfies requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317. In the case of radio advertisements, the oral disclosure requirements under State law in this section incorporate the content requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

(h) No Additional Liability of Television or Radio Outlets. – Television or radio outlets shall not be liable under this Part for carriage of political advertisements that fail to include the disclosure requirements provided for in this Part.

(i) No Criminal Liability. – Nothing in this section regarding the disclosure requirements in subsections (b) and (c) of this section shall be relied upon or otherwise interpreted to create criminal liability."

SECTION 10. Article 22E of Chapter 163 of the General Statutes is repealed.

SECTION 11. Article 22F of Chapter 163 of the General Statutes is repealed.

SECTION 12. Article 22G of Chapter 163 of the General Statutes is repealed.

SECTION 13. Article 22H of Chapter 163 of the General Statutes is repealed.

SECTION 14. G.S. 163-278.62(5a) reads as rewritten:

"(5a) Electioneering communication. – As defined in ~~G.S. 163-278.80 and G.S. 163-278.90,~~ G.S. 163-278.6, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day."

SECTION 15. G.S. 163-278.96(6a) reads as rewritten:

"(6a) Electioneering communication. – As defined in ~~G.S. 163-278.80 and G.S. 163-278.90;~~G.S. 163-278.6, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day."

SECTION 16. G.S. 138A-3(15) reads as rewritten:

"(15) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, liaison personnel, or a person described under G.S. 138A-32(d)(1), (2), or (3). The following shall not be considered gifts under this subdivision:

a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.

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

c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

d. Academic or athletic scholarships based on the same criteria as applied to the public.

e. ~~Campaign contributions~~ Anything of value properly ~~received and~~ reported as required under Article 22A of Chapter 163 of the General Statutes.

f. Expressions of condolence related to a death of an individual, sent within a reasonable time of the death, if the expression is one of the following:

1. A sympathy card, letter, or note.
2. Flowers.

3. Food or beverages for immediate consumption.
4. Donations to a religious organization, charity, the State or a political subdivision of the State, not to exceed a total of two hundred dollars ($200.00) per death per donor.

SECTION 17. G.S. 120C-800(e) reads as rewritten:

"(e) This section shall not apply to any of the following:

(1) ~~Lawful campaign contributions~~Anything of value properly ~~received and~~ reported as required under Article 22A of Chapter 163 of the General Statutes.

(2) Any reportable expenditure from a designated individual's extended family member to a designated individual.

(3) Reportable expenditures associated primarily with the designated individual's employment or that designated individual's immediate family member's employment.

(4) Reportable expenditures, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(6) A scholarship paid for by a nonpartisan state, regional, national, or international legislative organization of which the General Assembly is a member or a legislator or legislative employee is a member or participant of by virtue of that legislator's or legislative employee's public position, or to an affiliated organization of that nonpartisan state, regional, national, or international organization.

SECTION 18. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 19. Sections 1 through 15 of this act becomes effective upon preclearance by the United States Department of Justice. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 1, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Perry Newsom	SEC
Mary Shuping	SEC
Kathleen Edwards	State Ethics Comm.
[illegible]	Multi Client
Amanda Thompson	NC DOJ/SBI
Amanda Overman	NC DOJ/SBI
Mike Budzynski	NC DOJ/SBI
Sarah Pharr	United Way of NC
Lisa Martin	NC Home Builders

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 1, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Chip Kullen	Nelson Mullins
Jack H. Boger	NCSOS
David Heinen	NC Center for Nonprofits
Amy McConkey	NC Beverage Assoc.
Jennifer Chrisohon	NC DOL
Charles Mahell	Brooks Pierce
Wade Hargrove	" "
Sonny Robertson	TWC
Linda Dunker	NCAE
Becki Gray	John Locke Foundation
Amelia Thompson	State Ethics Comm.

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 1, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
J. Bussian	NC Pharm Assn.

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 1, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Doug Lassiter	NCSTA
Kelli Kulma	NCLM
Mark Prak	BPM HL
Patrick Buffkin	NCAEC
Michael Briesacher	N+O
Britt Gunnell	NCRA
Fred Baggett	Smith Moore Leatherwood
Leanne Winner	NCSBA
Karen Geanuel	NCACC
Kelly W. Cholette	GSK
Melissa Lovell	NC DOJ

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 1, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Drew Ball	Sierra Club
Erin Schwettpely	UNC-GA
Jessi Hayes	NCHBA
David McGowan	NC Realtors
Cameron Hanley	Electricities of NC
Danica Baum	Troutman Sanders
BRIAN DEMPSEY	MWC
David Anders	PFFPNC
Mary Beth McMillan	NC AFL-CIO
Rose Williams	NCDOI

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 1, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Allison Calder	Paulatics
Bob Phillips	Common Cause
Bruce Mildwurf	NRA
Tammy Smith	NC ADC
John McMullen	NFIB
Michelle Frazier	NFIB
[illegible]	UM
Janie Hauser	DENR
Whitney Campbell	Jordan Price
Weatherly Rae	Hunton + Williams
PAIGE WORSHAM	SCHOOL OF GOVERNMENT

PAGES ATTENDING

Date: 7-1

Committee: Judiciary I **Room:** 1027 LB 9AM

PLEASE PRINT LEGIBILY!!!!!

Page Name	Hometown	Sponsoring Senator
1 Haley Ezzell	Harrells	~~Albertson~~
2 Katya Mordhorst	Almond	Snow :)
3 Kalie Eppley	Boone	Tillman
Harry Riegel	Cary	Stein
5 Lillian Badgett	Statesville	Forrester
6		
7		
8		
9		

Do not add additional names below the grid.

Pages: Please present this form to either the Committee Clerk at the eting or a Sgt. at Arms.

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 1, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
John Bowdish	AstraZeneca
Barbara Conklin	BSCGR
John Politis	NCAHA
Anita Watkins	UNC GA
Phil Feagan	Gov's Office
Thom Jones	NCACC

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

MINUTES

July 6, 2010
Room 1027
Legislative Building
10 a.m.

Welcome and Attendance

The Senate Judiciary I Committee met Thursday, July 1 in Room 1027 of the Legislative Building. Committee Chairman Martin Nesbitt presided, calling the meeting to order at 10:11 a.m.

In attendance with Chairman Nesbitt were Committee Vice Chairman Dan Clodfelter, Vice Chairman Pete Brunstetter, Vice Chairman R. C. Soles and Vice Chairman Josh Stein. Members present were Senator Charlie Albertson, Senator Phil Berger, Senator Andrew Brock, Senator Harry Brown, Senator Debbie Clary, Senator Margaret Dickson, Senator David Hoyle, Senator Clark Jenkins, Senator Ellie Kinnaird, Senator Floyd McKissick, Senator David Rouzer, Senator Richard Stevens and Senator Jerry Tillman. Staff present was Committee Counsel Erika Churchill, Giles Perry, Bill Patterson Susan Sitze, and Committee Assistant Jessica Kozma Proctor.

House Bill 1136

Chairman Nesbitt asked Vice Chairman Clodfelter to chair to allow Chairman Nesbitt to explain the Bill. Chairman Nesbitt began saying that House Bill 1136 addressed current statute that if a legislative member is deceased, the family still has to file a statement of financial interest. If the member dies intestate, money held in campaign accounts goes into the Escheat Fund. After the death of former Senator Vernon Malone, the family had concerns about where leftover campaign money went. Chairman Nesbitt then asked Counsel Churchill to further explain the Bill.

Ms. Churchill added that the Bill extends the date to file a statement of personal interest beyond 60 days from the death of the legislative member. Vice Chairman Clodfelter recognized Senator Stein, who offered an amendment to the Bill.

The amendment passed unanimously.

A second amendment was offered by Senator McKissick to extend the filing deadline to 90 days. The amendment passed by unanimous vote.

Senator Hoyle motioned for favorable report, unfavorable to House Bill #1 but favorable to Senate Proposed Committee Substitute #1. The motion carried by unanimous vote.

Senate Bill 1383

Chairman Nesbitt recognized Vice Chairman Clodfelter to explain the Bill. Vice Chairman Clodfelter explained the Bill, which may be found at:

Vice Chairman Stein offered an amend the Bill on page 5, lines 47-49. Chairman Nesbitt called for discussion about the amendment. Senator Albertson asked how many people would be effected by the Bill. Vice Chairman Clodfelter said the number of people effected was yet to be defined. Senator Blue commented that the U.S. Constitution still mandates a speedy trial, and questioned whether the amendment worked to safeguard the Constitution. Chairman Nesbitt moved to have a provision of the life of a DNA sample to be changed from five to three years. The amendment passed by unanimous vote.

Senator Martin Nesbitt, Jr.
Chairman

Jessica Kozma Proctor
Committee Assistant

AGENDA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

SENATOR MARTIN L. NESBITT, CHAIRMAN
Senator Pete Brunstetter, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman
Senator Josh Stein, Vice Chairman

Tuesday, July 6, 2010
10 a.m.
Room 1027

1. **Call Meeting to Order.**

2. **Recognize members, staff, and guests.**

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
HB 1874	Chapter 50B Fee Clarification.	Representative Ross Representative Rhyne, Jr. Representative McLawhorn Representative Goodwin
SB 1383 HB 1136	Safer Streets/DNA Initiatives. Executive Branch Revolving Door.	Senator Clodfelter Representative Ross Representative Stam

Adjournment.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 1136
PROPOSED SENATE COMMITTEE SUBSTITUTE H1136-CSST-107 [v.5]

7/5/2010 7:22:41 PM

Short Title: Designation of Uses of Campaign Funds. (Public)

Sponsors:

Referred to:

April 7, 2009

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE PERSONAL REPRESENTATIVE OF A DECEASED CANDIDATE WHO DID NOT FILE A WRITTEN DESIGNATION PRIOR TO DEATH TO FILE SUCH WRITTEN DESIGNATION WITHIN 60 DAYS OF DEATH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-278.16B(c) reads as rewritten:

"(c) Contributions made to a candidate or candidate campaign committee do not become a part of the personal estate of the individual candidate. The candidate may file with the board a written designation of those funds that directs to which of the permitted uses in subsection (a) of this section ~~they~~ those funds shall be paid in the event of the death or incapacity of the candidate. If the candidate fails to file the written designation before death, the personal representative of the estate may file the written designation within 60 days of the date of death. After the payment of permitted outstanding debts of the account, the candidate's filed written designation shall control. If the candidate files no such written designation, the funds after payment of permitted outstanding debts shall be distributed in accordance with subdivision (a)(8) of this section."

SECTION 2. This act is effective when it becomes law. For any candidate campaign committee that is in active status with the State Board of Elections as of the date this act becomes law, the personal representative of the estate may file the written designation within 60 days of the day this act receives preclearance under Section 5 of the Voting Rights Act.

HOUSE BILL 1136:
Designation of Uses of Campaign Funds

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	July 5, 2010
Introduced by:	Reps. Ross, Stam	**Prepared by:**	R. Erika Churchill
Analysis of:	PCS to First Edition H1136-CSST-107		Committee Counsel

SUMMARY: ***The proposed committee substitute would authorize the personal representative of a candidate who did not file a written designation for the permitted uses of remaining campaign funds to do so within 60 days of the date of death.***

CURRENT LAW: G.S. 163-278.16B governs the permitted uses of contributions accepted by a candidate or candidate's committee.

A candidate or candidate's campaign committee could use contributions only for the following purposes:

- Expenditures resulting from the campaign for public office.
- Expenditures resulting from holding public office.
- Contributions to a charitable organization provided that the candidate or the candidate's spouse, children, parents, brothers or sisters are not employed by the organization or on any board governing the organization.
- Contributions to a national, State, or district or county committee of a political party or a caucus of the political party.
- Contributions to another candidate or candidate's campaign committee.
- To return all or a portion of a contribution to the contributor.
- Payment of any penalties against the candidate or candidate's campaign committee imposed by a board of elections or a court of competent jurisdiction.
- Payment to the State Escheat Fund.
- A donation of $4,000 or less to a legal expense fund.

Contributions made to a candidate or candidate's committee are not includable in the candidate's personal estate. However, the candidate may file a written statement with the appropriate board of elections designating how the funds remaining in the campaign account shall be spent upon the candidate's death or incapacity. If there is no such statement, the funds, less any outstanding permitted debts, go to the Escheat Fund.

BILL ANALYSIS: The proposed committee substitute would authorize the personal representative of a deceased candidate to file the written authorization that a candidate may now file prior to death, if filed within 60 days of death. This would allow the personal representative to designate to which of the permitted uses the remaining campaign funds would be paid, after the payment of outstanding debts is completed.

EFFECTIVE DATE: Effective when it becomes law, and permits any the personal representative of any candidate associated with an active campaign to make such a designation within 60 days preclearance under Section 5 of the Voting Rights Act.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1136

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

H1136-AST-176 [v.1]

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

Date _____,2010

Senator _____

moves to amend the bill on page 1, line 12 by deleting the phrase "death." and substituting the phrase "death, and may only direct those funds to donations under subdivision (a)(3) of this section.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1383
PROPOSED COMMITTEE SUBSTITUTE S1383-CSSA-81 [v.2]

7/2/2010 12:53:38 PM

Short Title: Safer Streets/DNA Initiatives. (Public)

Sponsors:

Referred to:

May 26, 2010

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON ARRESTED FOR COMMITTING CERTAIN OFFENSES, AND TO AMEND THE STATUTES THAT PROVIDE FOR A DNA SAMPLE UPON CONVICTION.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as "The DNA Database Act of 2010."

SECTION 2. G.S. 15A-266.2 reads as rewritten:

"**§ 15A-266.2. Definitions.**

As used in this Article, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) "CODIS" means the FBI's national DNA identification index system that allows the storage and exchange of DNA records submitted by federal, State and local forensic DNA laboratories. The term "CODIS" is derived from Combined DNA Index ~~System.~~System (NDIS) administered and operated by the Federal Bureau of Investigation.

(1a) "Custodial Agency" means the governmental entity in possession of evidence collected as part of a criminal investigation or prosecution. ~~This term includes a central evidence storage facility operated by a State agency.~~

(2) "DNA" means deoxyribonucleic acid. DNA is located in the ~~nucleus of~~ cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

(3) "DNA Record" means DNA identification information stored in the State DNA Database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA ~~typing tests.~~ analysis. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification ~~tests~~ analyses on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.

(4) "DNA Sample" ~~in this Article~~ means ~~a~~ blood, ~~buccal,~~ cheek swabs, or any ~~other~~ biological sample containing cells provided by any person with respect to ~~convicted of~~ offenses covered by this Article or submitted to the ~~SBI~~

~~Laboratory~~ State Bureau of Investigation pursuant to this Article for analysis pursuant to a criminal ~~investigation.~~investigation or storage or both.

(5) "FBI" means the Federal Bureau of Investigation.

(5a) "NDIS" means the National DNA Index System that is the national DNA database system of DNA ~~profile~~ records ~~which~~ that meet federal quality assurance and privacy standards.

(6) "SBI" means the State Bureau of Investigation. The SBI is responsible for the ~~policy management~~ policy, management, and administration of the State DNA identification record system to support law ~~enforcement, and for liaison with the FBI regarding the State's participation in CODIS.~~enforcement and other criminal justice agencies.

(7) "State DNA Database" means the SBI's DNA identification record system to support law enforcement. It is administered by the SBI and provides DNA records to the FBI for storage and maintenance in CODIS. The SBI's DNA Database system is the collective capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related ~~to forensic casework, to convicted offenders required to provide a DNA sample under this Article, and to anonymous DNA records used for research or quality control.~~ to: forensic casework; convicted offenders, and arrestees required to provide a DNA sample under this Article; persons required to register as sex offenders under G.S. 14-208.7; unidentified persons or body parts; missing persons; relatives of missing persons; and anonymous DNA profiles used for forensic validation, forensic protocol development, or quality control purposes or establishment of a population statistics database for use by criminal justice agencies.

(8) "State DNA Databank" means the repository of DNA samples collected under the provisions of this Article.

(9) "Criminal Justice Agency" means an agency or institution of a federal, State, or local government, other than the office of the public defender, that performs as part of its principal function, activities relating to the apprehension, investigation, prosecution, adjudication, incarceration, supervision, or rehabilitation of criminal offenders.

(10) "Arrestee" means any person arrested for an offense in G.S. 15A-266.3A(d) or (e).

(11) "Conviction" includes a conviction by a jury or a court, a guilty plea, a plea of nolo contendere, or a finding of not guilty by reason of insanity or mental disease or defect."

SECTION 3. G.S. 15A-266.3 reads as rewritten:

"**§ 15A-266.3. ~~Procedural compatibility with the FBI.~~Establishment of State DNA database and databank.**

~~The DNA identification system as established by the SBI shall be compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory equipment, supplies, and computer software.~~ There is established under the administration of the SBI, the State DNA database and State DNA databank. The SBI shall provide DNA records to the FBI for the searching of DNA records nationwide and storage and maintenance by CODIS. The State DNA databank shall serve as the repository for DNA samples obtained pursuant to this Article. The State DNA database shall be compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory and computer equipment, supplies and computer platform and software. The State DNA database shall have the capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related to all of the following:

(1) Crime scene evidence and forensic casework.
(2) Arrestees, offenders, and persons found not guilty by reason of insanity, who are required to provide a DNA sample under this Article.
(3) Persons required to register as sex offenders under G.S. 14-208.7.
(4) Unidentified persons or body parts.
(5) Missing persons.
(6) Relatives of missing persons.
(7) Anonymous DNA profiles used for forensic validation, forensic protocol development, or quality control purposes or establishment of a population statistics database, for use by criminal justice agencies."

SECTION 4. Article 13 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-266.3A. DNA sample required for DNA analysis upon arrest for certain offenses.**

(a) Unless a DNA sample has previously been obtained by lawful process and the DNA record stored in the State DNA Database, and that record and sample has not been expunged pursuant to any provision of law, a DNA sample for DNA analysis and testing shall be obtained from any person who is arrested for committing an offense described in subsection (d) or (e) of this section.

(b) The DNA sample shall be obtained from an arrested person at the time of arrest, or when fingerprinted. However, if the person is arrested without a warrant, then the DNA sample shall not be taken until a probable cause determination has been made pursuant to G.S. 15A-511(c)(1). The DNA sample shall be by cheek swab unless a court order authorizes that a DNA blood sample be obtained. If a DNA blood sample is taken, it shall comply with the requirements of G.S. 15A-266.6(b). The DNA sample shall be forwarded to the appropriate laboratory for DNA analysis and testing.

(c) The DNA record of identification characteristics resulting from the DNA testing and the DNA sample itself shall be stored and maintained by the SBI in the State DNA Databank pursuant to this Article.

(d) This section shall apply to a person arrested for violating G.S. 20-106, Receiving or transferring stolen vehicles, or any one of the following offenses in Chapter 14 of the General Statutes:

(1) G.S. 14-17, First and Second Degree Murder.
(2) G.S. 14-18, Manslaughter.
(3) Any offense in Article 7A, Rape and Other Sex Offenses.
(4) Any offense punishable as a felony in Article 8, Assaults; and G.S. 14-32.1, Assault on a Handicapped Person.
(5) Any offense in Article 10, Kidnapping and Abduction, or Article 10A, Human Trafficking.
(6) Any offense in Article 14, Burglary.
(7) Any offense in Article 15, Arson.
(8) Any offense in Article 17, Robbery.
(9) Any offense which would require the person to register under the provisions of Article 27A of Chapter 14 of the General Statutes, Sex Offender and Public Protection Registration Programs.
(10) G.S. 14-196.3, Cyberstalking.
(11) G.S. 14-277.3A, Stalking.

(e) This section shall also apply to a person arrested for attempting, solicitation of another to commit, conspiracy to commit, or aiding and abetting another to commit, any of the violations included in subsection (d) of this section.

(f) The State Bureau of Investigation shall remove a person's DNA record, and destroy any DNA biological samples that may have been retained, from the State DNA Database and DNA Databank if both of the following are determined pursuant to subsection (g):

(1) As to the charge, or all charges, resulting from the arrest upon which a DNA sample is required under this section, a court or the district attorney has taken action resulting in any one of the following:

a. The charge has been dismissed.

b. The person has been acquitted of the charge.

c. No charge was filed within the statute of limitations, if any.

d. No conviction has occurred, and at least five years has passed since the date of arrest.

(2) The person's DNA record is not required to be in the State DNA Database under some other provision of law, or is not required to be in the State DNA Database based upon an offense from a different transaction or occurrence from the one which was the basis for the person's arrest.

(g) Subject to the requirements of subsection (f) of this section, the defendant or the defendant's counsel shall provide the prosecuting district attorney with a signed request form, promulgated by the Administrative Office of the Courts, requesting that the defendant's DNA record be expunged from the DNA Database and that any biological samples in the DNA Databank be destroyed.

Upon receipt of the request form from the defendant or the defendant's counsel, the district attorney shall (i) determine whether one of the actions in subdivision (1) of subsection (f) of this section has occurred, and if so, (ii) sign the request form or, if the defendant was acquitted or the charges were dismissed by the court, provide the request form for signature by a judge, and (iii) transmit the request form to the SBI no later than 30 days following receipt of the form. If the district attorney determines that none of the actions in subdivision (1) of subsection (f) of this section have occurred, then no later than 30 days following receipt of the request form, the district attorney shall mail to the defendant, at the address specified in the request form, a notice that the DNA record and sample does not qualify for expunction.

Upon receipt of the request form from the district attorney, the SBI shall, within 30 days of receipt of the form, (i) determine whether the requirement of subdivision (2) of subsection (f) of this section has been met, and if so, (ii) remove the person's DNA record and samples as required by subsection (f) of this section. The SBI shall, within 30 days of receipt of the request form, mail to the defendant, at the address specified in the request form, a notice either, (i) documenting expunction of the DNA record and destruction of the DNA sample, or (ii) notifying the defendant that the DNA record and sample do not qualify for expunction pursuant to subsection (f) of this section.

The defendant may file a motion with the court to review the denial of the defendant's request or the failure of either the district attorney or the SBI to act within the prescribed time period.

(h) Any identification, warrant, probable cause to arrest, or arrest based upon a database match is not invalidated due to a failure to expunge or a delay in expunging records.

(i) A DNA record and sample shall not be expunged under this section if the defendant is either found guilty of, or pleads guilty or nolo contendere to, a lesser-included offense of the charge upon which the DNA sample was based, unless the lesser-included offense is a misdemeanor not included in subsection (d) or (e) of this section.

(j) Notwithstanding subsection (f) of this section, the SBI is not required to destroy or remove an item of physical evidence obtained from a sample if evidence relating to another person would thereby be destroyed.

(k) The SBI shall adopt procedures to comply with this section."

SECTION 5. G.S. 15A-266.4 reads as rewritten:

"§ 15A-266.4. ~~Blood sample~~DNA sample required for DNA analysis upon conviction or finding of not guilty by reason of insanity.

(a) Unless a DNA sample has previously been obtained by lawful process and a record stored in the State DNA ~~database,~~Database, and that ~~sample has~~record and sample have not been expunged pursuant to ~~G.S. 15A-148, on or after December 1, 2003, a person~~any provision of law, a person:

(1) ~~who~~ Who is convicted of any of the crimes listed in subsection (b) of this section or who is found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with ~~G.S. 15A-1321~~G.S. 15A-1321, shall ~~have~~ provide a DNA sample ~~drawn~~ upon intake to jail, prison, or the mental health facility. In addition, every person convicted ~~on or after December 1, 2003,~~ of any of these crimes, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence.

(2) ~~A person who~~Who has been convicted and incarcerated as a result of a conviction of one or more of ~~these crimes prior to December 1, 2003,~~the crimes listed in subsection (b) of this section, or who was found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with ~~G.S. 15A-1321 before December 1, 2003,~~G.S. 15A-1321, shall ~~have~~ provide a DNA sample ~~drawn~~ before parole or release from the penal system or before release from the mental health facility.

(b) Crimes covered by this Article include all of the following:

(1) All felonies.

~~(2) G.S. 14-32.1 – Assaults on handicapped persons.~~

(3) ~~G.S. 14-277.3A or former~~Former G.S. 14-277.3 – Stalking.

~~(4) G.S. 14-27.5A – Sexual battery.~~

(5) All offenses described in G.S. 15A-266.3A."

SECTION 6. G.S. 15A-266.5 reads as rewritten:

"§ 15A-266.5. Tests to be performed on ~~blood sample.~~DNA sample.

(a) The tests to be performed on each ~~blood~~ DNA sample are:

(1) To analyze and type only the genetic markers that are used for identification purposes contained in or derived from the DNA.

(2) For law enforcement identification purposes.

(3) For research and administrative purposes, including:

a. Development of a population database when personal identifying information is removed.

b. To support identification research and protocol development of forensic DNA analysis methods.

c. For quality control purposes.

d. To assist in the recovery or identification of human remains from mass disasters or for other humanitarian purposes, including identification of missing persons.

(b) The DNA record of identification characteristics resulting from the DNA testing shall be stored and maintained by the SBI in the State DNA Database. The DNA sample itself will be stored and maintained by the SBI in the State DNA Databank.

(c) The SBI shall report on the DNA testing and analysis provided under this Article to the Joint Legislative Commission on Governmental Operations annually, no later than February 1."

SECTION 7. G.S. 15A-266.6 reads as rewritten:

"§ 15A-266.6. Procedures for ~~withdrawal of blood sample for~~ obtaining DNA ~~analysis.~~sample for analysis; refusal to provide sample.

(a) Each DNA sample ~~required to be drawn~~ provided pursuant to G.S. 15A-266.4 from persons who are incarcerated shall be ~~drawn~~ obtained at the place of incarceration. DNA samples from persons who are not sentenced to a term of confinement shall be ~~drawn~~ obtained immediately following sentencing. The sentencing court shall order any person not sentenced to a term of ~~confinement~~ confinement, who has not previously provided a DNA sample pursuant to any provision of law requiring a sample and whose DNA record and sample have not been expunged pursuant to law, to report immediately following sentencing to the location designated by the sheriff. If the sample cannot be taken immediately, the sheriff shall inform the court of the date, time, and location at which the sample shall be taken, and the court shall enter that date, time, and location into its order. A copy of the court order indicating the date, time, and location the person is to appear to have a sample taken shall be given to the sheriff. If a person not sentenced to a term of confinement fails to appear immediately following sentencing or at the date, time, and location designated in the court order, the sheriff shall inform the court of the failure to appear and the court may issue an order to show cause pursuant to G.S. 5A-15 and may issue an order for arrest pursuant to G.S. 5A-16. The defendant shall continue to be subject to the court's order to provide a DNA sample until such time as his or her DNA sample is analyzed and a record is successfully entered into the State DNA Database.

(b) If, for any reason, the defendant provides a DNA blood sample instead of a cheek swab, ~~Only~~ only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory technician, phlebotomist, or other health care worker with phlebotomy training shall draw ~~any~~ the DNA blood sample to be submitted for analysis. No civil liability shall attach to any person authorized to draw blood by this section as a result of drawing blood from any person if the blood was drawn according to recognized medical procedures. No person shall be relieved from liability for negligence in ~~the drawing of any~~ obtaining a DNA ~~sample.~~sample by any method.

(c) The SBI shall provide to the sheriff the materials and supplies necessary to ~~draw~~ obtain a DNA sample from a person not sentenced to a term of confinement. Any DNA sample drawn from a person not sentenced to a term of confinement shall be taken using the materials and supplies provided by the SBI.

(d) Duly authorized law enforcement and corrections personnel may employ reasonable force in cases where an individual refuses to provide a DNA sample required under this Article, and no such employee shall be civilly or criminally liable for the use of such reasonable force.

(e) Any person who is subject to the requirements of this Article, and who, after receiving notification of the requirement to provide a DNA sample, knowingly refuses to provide such DNA sample, shall be guilty of a Class A1 misdemeanor.

(f) The detention, arrest, or conviction of a person based upon a database match or database information is not invalidated if it is determined that the sample was obtained or placed in the database by mistake."

SECTION 8. G.S. 15A-266.7 reads as rewritten:

"**§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood~~ DNA sample.**

~~The SBI shall adopt rules governing the procedures to be used in the submission, identification, analysis, and storage of DNA samples and typing results of DNA samples submitted under this Article. The DNA sample shall be securely stored in the State Databank. The typing results shall be securely stored in the State Database. These procedures shall also include quality assurance guidelines to insure that DNA identification records meet standards and audit standards for laboratories which submit DNA records to the State Database. Records of testing shall be retained on file at the SBI.~~

(a) The SBI shall:

(1) Adopt procedures to be used in the submission, identification, analysis, and storage of DNA samples and typing results of DNA samples submitted under this Article. These procedures shall also include quality assurance guidelines to insure that DNA identification records meet audit standards for laboratories which submit DNA records to the State DNA Database.

(2) Adopt Quality Assurance Guidelines for DNA Testing Laboratories and DNA Databasing Laboratories that meet or exceed the quality assurance guidelines established for such laboratories by the CODIS unit of the Federal Bureau of Investigation.

(b) DNA samples shall be securely stored in the State DNA Databank. The typing results shall be securely stored in the State DNA Database.

(c) Records of testing shall be retained on file at the SBI."

SECTION 9. G.S. 15A-266.8 reads as rewritten:

"**§ 15A-266.8. DNA database exchange.**

(a) It shall be the duty of the SBI to receive DNA samples, to store, to analyze or to contract out the DNA typing analysis to a qualified DNA laboratory that meets the guidelines as established by the SBI, classify, and file the DNA record of identification characteristic profiles of DNA samples submitted pursuant to ~~G.S. 15A-266.7~~ this Article and to make such information available as provided in this section. The SBI may contract out DNA typing analysis to a qualified DNA laboratory that meets guidelines as established by the SBI. The results of the DNA profile of individuals in the State Database shall be made available to local, State, or federal law enforcement agencies, approved crime laboratories which serve these agencies, or the district attorney's office upon written or electronic request and in furtherance of an official investigation of a criminal offense. These records shall also be available upon receipt of a valid court order directing the SBI to release these results to appropriate parties not listed above, when the court order is signed by a superior court judge after a hearing. The SBI shall maintain a file of such court orders.

(b) The SBI shall adopt rules governing the methods of obtaining information from the State Database and CODIS and procedures for verification of the identity and authority of the requester.

(c) The SBI shall create a separate population database comprised of ~~blood~~ DNA samples obtained under this Article, after all personal identification is removed. Nothing shall prohibit the SBI from sharing or disseminating population databases with other law enforcement agencies, crime laboratories that serve them, or other third parties the SBI deems necessary to assist the SBI with statistical analysis of the SBI's population databases. The population database may be made available to and searched by other agencies participating in the CODIS system."

SECTION 10. G.S. 15A-266.11 reads as rewritten:

"**§ 15A-266.11. Unauthorized uses of DNA Databank; penalties.**

(a) Any person ~~who, by virtue of employment, or official position,~~ who has possession of, or access to, individually identifiable DNA information contained in the State DNA Database or Databank and who willfully discloses it in any manner to any person or agency not entitled to receive it is guilty of a ~~Class 1 misdemeanor in accordance with G.S. 14-3.~~ Class H felony.

(b) Any person who, without authorization, willfully obtains individually identifiable DNA information from the State DNA Database or Databank is guilty of a ~~Class 1 misdemeanor in accordance with G.S. 14-3.~~ Class H felony."

SECTION 11. G.S. 15A-266.12 reads as rewritten:

"**§ 15A-266.12. Confidentiality of records.**

(a) All DNA profiles and samples submitted to the SBI pursuant to this Article shall be treated as confidential and shall not be disclosed to or shared with any person or agency except as provided in G.S. 15A-266.8.

(b) Only DNA records and samples that directly relate to the identification of individuals shall be collected and stored. These records and samples shall solely be used as a part of the criminal justice system for the purpose of facilitating the personal identification of the perpetrator of a criminal offense; provided that in appropriate circumstances such records may be used to identify potential victims of mass disasters or missing persons.

(c) DNA records and DNA samples submitted to the SBI pursuant to this Article are not a public record as defined by G.S. 132-1.

(d) In the case of a criminal proceeding, requests to access a person's DNA record shall be in accordance with the rules for criminal discovery as defined in G.S. 15A-902. The SBI shall not be required to provide the State DNA Database for criminal discovery purposes.

(e) DNA records and DNA samples submitted to the SBI may only be released for the following authorized purposes:

(1) For law enforcement identification purposes, including the identification of human remains, to federal, State, or local criminal justice agencies.

(2) For criminal defense and appeal purposes, to a defendant who shall have access to samples and analyses performed in connection with the case in which such defendant is charged or was convicted.

(3) If personally identifiable information is removed to local, State, or federal law enforcement agencies for forensic validation studies, forensic protocol development or quality control purposes, and for establishment or maintenance of a population statistics database.

(f) In order to maintain the computer system security of the SBI DNA database program, the computer software and database structures used by the SBI to implement this Article are confidential."

SECTION 12. Article 23 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-502A. DNA sample upon arrest.**

A DNA sample shall be obtained from any person arrested for an offense designated under G.S. 15A-266.3A, in accordance with the provisions contained in Article 13 of Chapter 15A of the General Statutes."

SECTION 13. G.S. 7B-2201 reads as rewritten:

"**§ 7B-2201. Fingerprinting and DNA sample from juvenile transferred to superior court.**

(a) When jurisdiction over a juvenile is transferred to the superior court, the juvenile shall be fingerprinted and the juvenile's fingerprints shall be sent to the State Bureau of Investigation.

(b) When jurisdiction over a juvenile is transferred to the superior court, a DNA sample shall be taken from the juvenile if any of the offenses for which the juvenile is transferred are included in the provisions of G.S. 15A-266.3A."

SECTION 14. This act becomes effective January 1, 2011.

SENATE BILL 1383:
Safer Streets/DNA Initiatives

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	July 2, 2010
Introduced by:	Sen. Clodfelter	**Prepared by:**	Susan Sitze
Analysis of:	PCS to First Edition S1383-CSSA-81		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1383 requires that a DNA sample be taken from any person arrested for an offense listed in the act and amends current statutes pertaining to the collection of DNA upon conviction.***

CURRENT LAW: Any person convicted of a felony offense, assault on a handicapped person, stalking, or sexual battery must provide a DNA blood sample. If the defendant's sentence includes confinement, the DNA sample is taken at the place of incarceration. If the sentence does not include incarceration, then the court includes, as a part of the judgment, that the defendant report to the sheriff at a time and place designated to provide the sample. If the defendant does not appear, a show cause order is issued, and the defendant may be held in contempt of court.

DNA samples are analyzed and the DNA profile is entered into the State DNA Database. The sample is then searchable through the Combined DNA Index System (CODIS), a DNA database funded by the United States Federal Bureau of Investigation. The DNA profiles are searched against all other profiles in the system, which includes suspect samples, and samples taken from both solved and unsolved crime scenes. If a "hit" is obtained between a sample and an unsolved forensic unknown, a confirmation process is initiated, and a report is issued.

The DNA profile that results from the analysis contains a series of numbers only, and can only identify an individual. The DNA sample is not analyzed for any type of personal physiological information, i.e., information that could disclose a person's propensity for diseases, etc. Consequently, this type of information cannot be included or stored in the State DNA Database. The DNA sample is maintained in order to confirm an identity if there is a "match" to an unsolved criminal offense, and, if requested, to provide a defendant with an opportunity to obtain an independent verification of the DNA profile in the DNA Database.

BILL ANALYSIS: The bill, entitled the "DNA Database Act of 2010," (Sec. 1) would make two significant changes to the State's laws on DNA sampling: DNA samples would be taken from persons upon arrest for specified offenses, and the general method of sampling would be changed from blood sample to cheek swab for all DNA sampling.

Section 2 amends the definitions section for Article 13 of Chapter 15A of the General Statutes (DNA Database and Databank) to reflect and clarify the changes made throughout the remainder of the bill.

Section 3 amends G.S. 15A-266.3 to specifically establish the State DNA database and State DNA databank and set forth their contents.

Section 4:

- A new section would be added to the current statutes, which were enacted by the "DNA Database Act of 2003." The DNA sample would be taken upon arrest, or when the person arrested is fingerprinted at booking. [If the arrest was made without a warrant, the DNA sample may not be taken until a magistrate has found probable cause that a crime was committed, and that the arrested person committed it.] The listed offenses relate to crimes

involving some type of violence, acts that are likely to injure persons or property, or are recognized as precursors to such acts. Any offense which would require the person to register as a sex offender, which includes some misdemeanors, is included.

- Records and samples relating to a defendant's DNA sample must be expunged if the charge is dismissed; is not filed in the appropriate time period; if the defendant is acquitted; or if no conviction occurs within 5 years of the arrest. The defendant or defendant's counsel provides a written notice to the prosecuting attorney that the defendant wants the DNA record and sample expunged, and the district attorney must initiate the process by: verifying that a qualifying circumstance exists; obtaining a judge's or a District Attorney's signature on a verification form; and the forwarding the form to the SBI. The district attorney has 30 days in which to complete verification and send the form to the SBI, or if he determines that no qualifying circumstance exists, he must notify the defendant by mail that the record is not eligible for expunction.
- The SBI determines whether the defendant's DNA record or sample is required to be maintained under some other provision of law. If not, the SBI expunges the record and sample from the State DNA Database and Databank. The act provides that the expunction is to take place within 30 days of the SBI's receipt of the verification form and the SBI must notify the defendant by mail that the expunction has occurred, or that the defendant does not qualify for expunction.
- If the defendant pleads guilty or nolo contendere to an offense which is a lesser included offense, then the DNA record is not expunged, unless the lesser-included offense is a misdemeanor not included on the list of offenses for DNA samples.
- The defendant has the right to have a court review the denial of the expunction or failure of either the district attorney or the SBI to act within the prescribed time period.

Section 5 makes technical amendments and reorganization of the statute that provides for the DNA samples of those convicted of designated offenses, whether sentenced to confinement or not.

- Current law requires persons convicted of felonies, and other designated offenses, to provide a DNA sample. The amendments would add the offenses which are listed in the new section on DNA upon arrest to the statute. Consequently, persons who are convicted of misdemeanor offenses requiring registration on the Sex Offender registry, who were not previously required to provide a DNA sample, would be required to do so.
- The act also amends the provision requiring a person to provide a DNA sample prior to his or her release from incarceration, or institutionalization due to a finding of not guilty by reason of insanity.

Section 6 deletes "blood" to conform to the language in the section on testing to reflect the additional methods of DNA sampling provided in the Article and clarifies that only genetic markers that are used for identification purposes are to be typed. This section includes a reporting provision on DNA analysis and testing by the SBI to the Joint Legislative Commission on Governmental Operations, to be submitted annually by February 1.

Section 7 amends the statute on procedures for obtaining DNA samples of convicted persons to:

- Reflect the additional methods of DNA sampling provided in the act.

- Clarify that if a defendant, who is not confined, provides a sample that can not be loaded into the State DNA database for any reason, he or she is under a continuing order to provide a DNA sample.
- Authorize law enforcement and corrections personnel to use reasonable force to obtain a DNA sample.
- Creates a Class A1 misdemeanor for refusing to provide a required DNA sample.
- Provides that a detention, arrest, or conviction of a person based upon a database match is not invalidated if it is determined that the sample was placed in the database by mistake.

Section 8 redrafts the section on procedures for conducting DNA analysis to include specific language relating to the adoption of quality assurance guidelines. The SBI would be required to adopt guidelines that meet or exceed the guidelines established by the CODIS unit of the FBI. All current requirements are retained, including the retention of testing records at the SBI.

Section 9 deletes the term "blood" to conform the language in the section on a separate population database to reflect the additional methods of DNA sampling provided in the act.

Section 10 increases the penalty for unauthorized disclosure of the DNA Databank from a Class 1 misdemeanor to a Class H felony. This section also amends the offense of unauthorized disclosure to apply to any person who possesses the information and not just persons who obtain it by virtue of employment or office.

Section 11 amends the confidentiality of records section to clarify that DNA records and samples are not public record and to provide a list of authorized purposes for release.

Section 12 amends the criminal procedure statutes by adding a new section that cross-references the DNA upon arrest statute. The new section immediately follows the current statute on the fingerprinting and photographing of arrestees, G.S. 15A-502A.

Section 13 amends the statute which requires the fingerprints of a juvenile whose case is transferred to the superior court for trial as an adult. The amendment provides that if the juvenile is transferred for an offense covered under the DNA Article, then a DNA sample would also be obtained.

EFFECTIVE DATE: The act is effective January 1, 2011.

- Any offense in Article 10, Kidnapping and Abduction
  - § 14-39. Kidnapping
  - § 14-40. Enticing minors out of the State for the purpose of employment
  - § 14-41. Abduction of children
  - § 14-43.1. Unlawful arrest by officers from other states
  - § 14-43.3. Felonious restraint

- Any offense in Article 10A, Human Trafficking
  - § 14-43.11. Human trafficking
  - § 14-43.12. Involuntary servitude
  - § 14-43.13. Sexual servitude

- Any offense in Article 14, Burglary
  - § 14-51. First and second degree burglary
  - § 14-51.1. Use of deadly physical force against an intruder
  - § 14-52. Punishment for burglary
  - § 14-53. Breaking out of dwelling house burglary
  - § 14-54. Breaking or entering buildings generally
  - § 14-54.1. Breaking or entering a building that is a place of religious worship
  - § 14-55. Preparation to commit burglary or other housebreakings
  - § 14-56. Breaking or entering into or breaking out of railroad cars, motor vehicles, trailers, aircraft, boats, or other watercraft
  - § 14-56.1. Breaking into or forcibly opening coin- or currency-operated machines
  - § 14-56.2. Damaging or destroying coin- or currency-operated machines
  - § 14-56.3. Breaking into paper currency machines
  - § 14-56.4. Preparation to commit breaking or entering into motor vehicles
  - § 14-57. Burglary with explosives

- Any offense in Article 15, Arson
  - § 14-58.2. Burning of mobile home, manufactured-type house or recreational trailer home
  - § 14-59. Burning of certain public buildings
  - § 14-60. Burning of schoolhouses or buildings of educational institutions
  - § 14-61. Burning of certain bridges and buildings
  - § 14-62. Burning of certain buildings
  - § 14-62.1. Burning of building or structure in process of construction
  - § 14-62.2. Burning of churches and certain other religious buildings
  - § 14-63. Burning of boats and barges
  - § 14-64. Burning of ginhouses and tobacco houses
  - § 14-65. Fraudulently setting fire to dwelling houses
  - § 14-66. Burning of personal property
  - § 14-67.1. Burning other buildings

- § 14-68. Failure of owner of property to comply with orders of public authorities
- § 14-69. Failure of officers to investigate incendiary fires
- § 14-69.1. Making a false report concerning destructive device
- § 14-69.2. Perpetrating hoax by use of false bomb or other device
- § 14-69.3. Arson or other unlawful burning that results in serious injury to a firefighter or emergency medical technician

- Any offense in Article 17, Robbery
  - § 14-87. Robbery with firearms or other dangerous weapons
  - § 14-87.1. Punishment for common-law robbery
  - § 14-88. Train robbery
  - § 14-89.1. Safecracking

- Any offense that would require the person to register under the provisions of Article 27A of Chapter 14, Sex Offender and Public Protection Registration Programs
  - § 14-27.2. First degree rape
  - § 14-27.2A. Rape of a child; adult offender
  - § 14-27.3. Second degree rape
  - § 14-27.4. First degree sexual offense
  - § 14-27.4A. Sex offense with a child; adult offender
  - § 14-27.5. Second degree sexual offense
  - § 14-27.5A. Sexual battery
  - § 14-27.6. Attempted rape or sexual offense
  - § 14-27.7. Intercourse and sexual offense with certain victims
  - § 14-27.7A(a). Statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older
  - § 14-43.13. Subjecting or maintaining a person for sexual servitude
  - § 14-178. Incest between near relatives)
  - § 14-190.6. Employing or permitting minor to assist in offenses against public morality and decency
  - § 14-190.9(a1). Felonious indecent exposure
  - § 14-190.16. First degree sexual exploitation of a minor
  - § 14-190.17. Second degree sexual exploitation of a minor
  - § 14-190.17A. Third degree sexual exploitation of a minor
  - § 14-190.18. Promoting prostitution of a minor
  - § 14-190.19. Participating in the prostitution of a minor
  - § 14-202.1. Taking indecent liberties with children
  - § 14-202.3. Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act
  - § 14-202.4(a). Taking indecent liberties with a student
  - § 14-318.4(a1). Parent or caretaker commit or permit act of prostitution with or by a juvenile
  - § 14-318.4(a2). Commission or allowing of sexual act upon a juvenile by parent or guardian

- Includes a solicitation or conspiracy to commit any of these offenses and/or aiding and abetting any of these offenses.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-70 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-81[v.2]

Date _____,2010

Senator _____

moves to amend the bill on page 5, lines 47-49
by rewriting those lines to read:

"(c) The SBI shall report annually to the Joint Legislative Commission on Governmental Operations and to the Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee, on or before February 1, with information for the previous calendar year, which shall include: a summary of the operations and expenditures relating to the DNA Database and DNA Databank; the number of DNA records from arrestees entered; the number of DNA records from arrestees that have been expunged; and the number of DNA arrestee matches or hits that occurred with an unknown sample, and how many of those have led to an arrest and conviction; and how many letters notifying defendants that a record and sample have been expunged, along with the number of days it took to complete the expunction and notification process, from the date of the receipt of the verification form from the State."

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. 1383 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) Berger

moves to amend the bill on page 7, line 3

( ) WHICH CHANGES THE TITLE

by deleting "Artick." and substituting

"Artick, including procedures for chain of custody of the DNA samples."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7/6/10

S. B. No. S1383-CSSA-81 Amendment No. 3
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
) Blue
Sen.)

moves to amend the bill on page 4, line 10

( ) WHICH CHANGES THE TITLE

by deleting "five years" and inserting "three years"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1383-CSSA-81 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) Kinnaird

moves to amend the bill on page 3, lines 45-46

( ) WHICH CHANGES THE TITLE

by

rewriting those lines to read:

"(10) G.S. 14-277.3A, Stalking."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-70 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-81[v.2]

Date _____,2010

Senator _____

moves to amend the bill on page 5, lines 47-49 .
by rewriting those lines to read:

"(c) The SBI shall report annually to the Joint Legislative Commission on Governmental Operations and to the Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee, on or before February 1, with information for the previous calendar year, which shall include: a summary of the operations and expenditures relating to the DNA Database and DNA Databank; the number of DNA records from arrestees entered; the number of DNA records from arrestees that have been expunged; and the number of DNA arrestee matches or hits that occurred with an unknown sample, and how many of those have led to an arrest and conviction; and how many letters notifying defendants that a record and sample have been expunged, along with the number of days it took to complete the expunction and notification process, from the date of the receipt of the verification form from the State."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1136

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

H1136-AST-176 [v.1]

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

Date 7/6 ,2010

Senator Stein

moves to amend the bill on page 1, line 12 by deleting the phrase "death." and substituting the phrase "death, and may only direct those funds to donations under subdivision (a)(3) of this section.".

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. 1136 DATE 7/16

S. B. No. _____ Amendment No. 2

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) McKissick

moves to amend the bill on page 1, lines 4, 12, and 20

( ) WHICH CHANGES THE TITLE

by deleting "60" and substituting "90".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1874:
Chapter 50B Fee Clarification

2009-2010 General Assembly

Committee:	Senate Judiciary I	**Date:**	July 2, 2010
Introduced by:	Reps. Ross, Goodwin, McLawhorn, Rhyne	**Prepared by:**	Susan Sitze Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1874 would clarify when court costs apply for amendments and counterclaims in domestic violence actions.***

[As introduced, this bill was identical to S1242, as introduced by Sen. Graham, which is currently in Unknown.]

CURRENT LAW: Currently, G.S. 7A-305 provides for the assessment of court costs in civil actions. The amounts vary according to the courts where the action is brought. The statute provides for the purposes for which the court costs are to be spent.

Generally, domestic violence actions under Chapter 50B, such as requests for protective orders, are exempted from court costs. However, costs do apply to any and all additional and subsequent actions filed by amendment to an original action brought under Chapter 50 – unless the amendment itself is brought under Chapter 50B.

The question has arisen whether the costs should be applied to secondary actions brought not only by amendment but also those brought by counterclaim. An additional question has arisen about what it means for secondary actions to be "also brought under Chapter 50B". Reportedly some parties to 50B actions have attempted to file actions for divorce as a counterclaim to a 50B action, thereby seeking to avoid paying court costs for a divorce action, and courts have had varied responses depending upon their reading of the law.

BILL ANALYSIS: The bill does two clarifying things to the current treatment of 50B actions for court costs:

1. It clarifies that costs apply to secondary claims filed not only by amendment, but also by counterclaim.
2. It clarifies that secondary claims that are exempt from court costs are those limited to requests for relief authorized by 50B.

EFFECTIVE DATE: This act becomes effective October 1, 2010.

BACKGROUND: This bill was recommended by the Joint Legislative Committee on Domestic Violence.

H1874-SMSA-157(e1) v1

**This summary was substantially prepared by William R. Gilkeson, Staff Attorney.*

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 6, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Sara Katsanis	Duke University
ANN Lore	DNR
Weatherly Rose	Hunton + Williams
[illegible]	TWC
[illegible]	[illegible]
[illegible]	MPA's
[illegible]	NCAE
Christine Wunsche	506 - Daily Bulletin
Charles Marshall	Brooks Pierce
Mark Prak	" "
Eddie Caldwell	NC Sheriffs' Assn.

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 6, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Grant Pendergraft	NC Sheriffs
Jessi Hayes	NC HBA
Tom Bennett	NCVAN
Agent OSO	
Mike Budzynski	NC DOJ SBI
Amanda Thompson	NCDOJ/SBI
Amanda Overman	NCDOJ/SBI
Joey Nichols	CR
Brian Lewis	NCAE
Heron Hatcher	Coca-Cola
Ken Wright	BCBSNC

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 6, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
	JDAC, PA
	Guitar

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 6, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Jay Pittman	HPAcpa
Colleen Kochanek	Kochanek Law Group
J Guduano	NC CPA's
Allison Waller	Charlotte Chamber
Dana Fenton	City of Charlotte
Todd Barlow	NC Advocates for Justice
Katherine Joyce	NCASA
Amy Whited	NCMS
Carl Dean	OSP
Jodi Maynard	GPM; Assoc
Stam	NC House

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 6, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Mark Fleming	BCBSNC
Robert Byrd	WV
[illegible]	NMRS
Peggy Mayo	[illegible]
Lee Rubert	USPC
Ardis Watkins	SEANC
Julie White	NCMC
Bill Scoggin	ITS
Kelli [illegible]	NCCM
Barbara Canales	BCBSNC
[illegible]	SEANC

PAGES ATTENDING

Date: 7-6

Committee: Judiciary I **Room:** 1027 LB 10 AM

PLEASE PRINT LEGIBILY!!!!!

	Page Name	Hometown	Sponsoring Senator
1	Lydia Parker	Chapel Hill	Ellie Kinnaird
2	Jenna H.	Durham	Bob Atwater
3	David Chappell	Raleigh	Stevens
4	Henry Pollitt	Raleigh	Stein
5	Paul Julian	carrboro	Kinnaird
6	Jason Trull	Mt. Pleasant	Hartsell
7	Andrew Sigarto	Raleigh	Hunt
8	Rhonda Hutchins	Goldsboro	Davis
9	Sedonia Scott	Goldsboro	Davis

Do not add additional names below the grid.

Pages: Please present this form to either the Committee Clerk at the meeting or a Sgt. at Arms.

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 6, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Bar	DEM
Joe Busa	NC DOJ
John Tarlton	NC DOJ
Jennifer Epperson	NC DOJ
Damon Circosta	NC voter ED
Webb Hargrove	Brooks, Pierce, McLendon
Cameron Hamby	Electricities of NC
Danice Baum	Troutman Sanders
Rick Zechini	NC Assoc of Realtors
Kathy Hankins	Duke Energy
[illegible]	NWC

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 6, 2010 10 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Hal Phillips	TWC
Gary Stallings	GSR
Tammy Smith	NCAOC

AGENDA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

SENATOR MARTIN L. NESBITT, CHAIRMAN
Senator Pete Brunstetter, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman
Senator Josh Stein, Vice Chairman

Wednesday, July 7, 2010
11 a.m.
Room 1027

1. Call Meeting to Order.

2. Recognize members, staff, and guests.

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
HB 748	Electioneering at Early Voting Sites.	Representative Ross Representative Weiss Representative Dollar Representative Stam
SB 1383	Safer Streets/DNA Initiatives.	Senator Clodfelter

Adjournment.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-72 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

Date _____,2010

Senator Berger of Rockingham

moves to amend the bill on page 7, line 5
by rewriting the line to read:
"(1) Adopt procedures to be used in the collection, security, submission, identification, analysis, and"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-74 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

Date _____,2010

Senator Dickson

moves to amend the bill on page 3, lines 25-26
by inserting between those lines the following:
"(b1) After taking a DNA sample from an arrested person required to provided a DNA sample pursuant to this section, the person taking the DNA sample shall provide the arrested person with a written notice of the procedures for seeking an expunction of the DNA sample pursuant to subsections (f) and (g) of this section. The Department of Justice shall develop, and distribute to all law enforcement agencies in the State, the written notice required by this subsection."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-74 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

Date _____,2010

Senator Dickson

moves to amend the bill on page 3, lines 25-26
by inserting between those lines the following:
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SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-76 [v.3]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

Date _____,2010

Senator Blue

moves to amend the bill on page 3, lines 25-26
by inserting between those lines the following:
"(b1) At the time a DNA sample is taken pursuant to this section, the person obtaining the DNA sample shall record, on a form promulgated by the SBI, the date and time the sample was taken, the name of the person from whom the sample was taken, and the offense or offenses for which the person was arrested. This record shall be maintained by the arresting law enforcement agency and shall be available to the prosecuting district attorney for the purpose of completing the requirements of subsection (g) of this section. Records maintained pursuant to this subsection shall not be a public record."

And on page 3, line 51
By deleting "subsection (g):" and inserting "subsections (g) and (g1):"

And on page 4, lines 13-37
By rewriting those lines to read:
"(g) Within 30 days of the occurrence of one of the events in subdivision (1) of subsection (f) of this section, the prosecuting district attorney shall determine if a DNA sample was taken pursuant to this section, and if so, shall:

(1) Indicate the facts of the qualifying event on a verification form promulgated by the Administrative Office of the Courts.
(2) Include the last known address of the defendant, as reflected in the court files, on the verification form.
(3) Sign the verification form or, if the defendant was acquitted or the charges were dismissed by the court, obtain the signature of a judge.
(4) Transmit the verification form to the SBI.

(g1) Within 30 days of receipt of the verification form, the SBI shall:

(1) Determine whether the requirement of subdivision (2) of subsection (f) of this section has been met.
(2) If the requirement has been met, remove the defendant's DNA record and samples as required by subsection (f) of this section.
(3) Mail to the defendant, at the address specified in the verification form, a notice either:

a. Documenting expunction of the DNA record and destruction of the DNA sample, or

b. Notifying the defendant that the DNA record and sample do not qualify for expunction pursuant to subsection (f) of this section.

(g2) The defendant may file a motion with the court to review the determination that the DNA record or sample do not qualify for expunction under this section or the failure of either the prosecuting district attorney or the SBI to act within the prescribed time period."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-76 [v.3]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

Date _____,2010

Senator Blue

moves to amend the bill on page 3, lines 25-26
by inserting between those lines the following:
"(b1) At the time a DNA sample is taken pursuant to this section, the person obtaining the DNA sample shall record, on a form promulgated by the SBI, the date and time the sample was taken, the name of the person from whom the sample was taken, and the offense or offenses for which the person was arrested. This record shall be maintained by the arresting law enforcement agency and shall be available to the prosecuting district attorney for the purpose of completing the requirements of subsection (g) of this section. Records maintained pursuant to this subsection shall not be a public record."

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SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-76 [v.3]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

Date _____,2010

Senator Blue

moves to amend the bill on page 3, lines 25-26
by inserting between those lines the following:
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SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-76 [v.3]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

Date _____,2010

Senator Blue

moves to amend the bill on page 3, lines 25-26
by inserting between those lines the following:
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(3) Mail to the defendant, at the address specified in the verification form, a notice either:

a. Documenting expunction of the DNA record and destruction of the DNA sample, or

b. Notifying the defendant that the DNA record and sample do not qualify for expunction pursuant to subsection (f) of this section.

(g2) The defendant may file a motion with the court to review the determination that the DNA record or sample do not qualify for expunction under this section or the failure of either the prosecuting district attorney or the SBI to act within the prescribed time period."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

PAGES ATTENDING

Date: 7-7

Committee: Judiciary I **Room:** 11 AM 1027

PLEASE PRINT LEGIBILY!!!!!

Page Name	Hometown	Sponsoring Senator
1 B'Renda Hutchins	Goldsboro	Davis
2 Sedonia Scott	Goldsboro	Davis
3 [illegible]	[illegible]	[illegible]
4 Jarret Massenburg	Raleigh	Dannelly
5 Jason Trull	Mt. Pleasant	Hartsell
6		
7		
8		
9		

Do not add additional names below the grid.

Pages: Please present this form to either the Committee Clerk at the meeting or a Sgt. at Arms.

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 7, 2010 11 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Thomas Mann	Fletcher Hicks
Rick Causey	Evidl
DAVID BARNES	Poyner Spruill
Carmen Hooker	Electric Cities of NC
ZEB ALLEY	NMRS
LEON KILLIAN	NMRS
Suzanne Bradley	SEANC
Kris Hopkins	SEANC
Chuck Stone	SEANC
Bill O'Brien	PFFPNC
Brad Phillips	TWC

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 7, 2010 11 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCPWA
John McAlister	NC Chamber
Amy Fullbright	Hunton&Williams
Scott Gaudreau	Duke Energy
Gary McLamb	NCAGO
Tommy Roberson	TWC
Jennifer Cohen	ITPC
Susan Valaam	NW
Lee-Ann Pennuto	NCANPHA
John Polanski	NCPWA
Leanne Winner	NCSBA

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 7, 2010 11 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Roz Sawitt	NC CCA

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 7, 2010 11 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Charles Marshall	Brooks, Pierce
John McMillan	MFTS
Michelle Fanier	MFTS
Brittany Farrell	NCFR
J Pinsky	NCCLGR
J. Peele	McKissick
Barbara Cameron	BBCOL
John Burdick	AstraZeneca

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 7, 2010 11 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Annalise Bolph	DRNC
Colleen Kochanek	Kochanek Law Group
Jennifer Willis	NLCCS
Andrew Cagle	DLC + Assoc
Weatherly Rose	Thurston + Williams
Whitney Campbell	Jordan Price
DOUG PARKS	City of Salisbury,
ANN LANE	DUKE
JOE LANIER	NELSON MULLINS
Gary Salamido	GSK
David Anders	PFFPAC

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 7, 2010 11 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Tammy Smith	NC AOC
Dallas Woodhouse	AFP-NC
Damon Circosta	NC Voter Ed.
Paula A. Wolf	El Pueblo
Allison Calder	Paulatics
Mark Prak	BPHA
David Crawford	AIA NC
Wade Hargrove	Brooks Pierce McLendon
Elizabeth Robinson	NCRMA
Kim Crawford	UCBA
Penny Gaffney	School of Gov.

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 7, 2010 11 a.m. Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Shannon McCoy	Nationwide
Chuck Stanley	NW
	Civitas
Thomas James	NCAJJ
Rebecca Troutman	NCAJJ
Henry Hutson	N.C.B.A.
Amy McConkey	NC BA
Becki Gray	John Locke Foundation
Mary Corl	Smith Anderson
Erica Nelson	NCCCP
Julia Adams	The Arc of NC Autism Society NC

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-71 [v.3]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82[v.1]

Date _____,2010

Senator Clodfelter

moves to amend the bill on page 4, lines 40-43
by rewriting those lines to read:
"(i) If the defendant is either found guilty of, or pleads guilty or nolo contendere to, a misdemeanor offense that is a lesser-included offense of the charge upon which the DNA sample was based, the DNA record and sample shall be expunged, unless the lesser-included misdemeanor offense is an offense included in subsection (d) or (e) of this section. A DNA record and sample shall not be expunged under this section if the defendant is either found guilty of, or pleads guilty or nolo contendere to, a felony offense."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-71 [v.3]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82[v.1]

Date _____,2010

Senator _____

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NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-71 [v.3]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82[v.1]

Date _____,2010

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NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-71 [v.3]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82[v.1]

Date _____,2010

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NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-75 [v.3]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

Date _____,2010

Senator Clodfelter

moves to amend the bill on page 3, line19
by rewriting that line to read:
"(b) The arresting law enforcement officer shall obtain, or cause to be obtained, a DNA sample from an arrested person at the time of arrest, or"

And on page 3, line 24
By rewriting that line to read:
"requirements of G.S. 15A-266.6(b). The arresting law enforcement officer shall forward, or cause to be forwarded, the DNA sample to the appropriate"

And on page 6, lines 33-36
By rewriting those lines to read:
"(c) The SBI shall provide ~~to the sheriff the materials and supplies~~the materials, supplies, and postage pre-paid envelopes necessary to ~~draw~~ obtain a DNA sample from a person ~~not sentenced to a term of confinement.~~required to provide a DNA sample pursuant to this Article and to forward the DNA sample to the appropriate laboratory for DNA analysis and testing. Any DNA sample ~~drawn from a person not sentenced to a term of confinement~~obtained pursuant to this Article, other than a DNA sample obtained from a person who is incarcerated, shall be taken using the materials and supplies provided by the SBI."

SIGNED _____
Amendment Sponsor

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Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-74 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

Date _____,2010

Senator Dickson

moves to amend the bill on page 3, lines 25-26
by inserting between those lines the following:
"(b1) After taking a DNA sample from an arrested person required to provided a DNA sample pursuant to this section, the person taking the DNA sample shall provide the arrested person with a written notice of the procedures for seeking an expunction of the DNA sample pursuant to subsections (f) and (g) of this section. The Department of Justice shall develop, and distribute to all law enforcement agencies in the State, the written notice required by this subsection."

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Committee Chair if Senate Committee Amendment

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NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-74 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

Date _____,2010

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NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-74 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

Date _____ ,2010

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Senate Bill 1383

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(to be filled in by
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Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

Date _____,2010

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NORTH CAROLINA GENERAL ASSEMBLY
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Senate Bill 1383

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

S1383-ASA-75 [v.3]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

Date _____,2010

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NORTH CAROLINA GENERAL ASSEMBLY
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Senate Bill 1383

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

S1383-ASA-75 [v.3]

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Committee Chair if Senate Committee Amendment

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NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-77 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

Date _____,2010

Senator Clodfelter

moves to amend the bill on page 4, lines 38-39
by rewriting those lines to read:
"(h) Any identification, warrant, probable cause to arrest, or arrest based upon a database match of the defendant's DNA sample which occurs after the expiration of the statutory periods prescribed for expunction of the defendant's DNA sample, shall be invalid and inadmissable in the prosecution of the defendant for any criminal offense."

And on page 6, lines 43-45
By deleting those lines.

SIGNED _____
Amendment Sponsor

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Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-72 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

Date _____,2010

Senator Berger of Rockingham

moves to amend the bill on page 7, line 5
by rewriting the line to read:

"(1) Adopt procedures to be used in the collection, security, submission, identification, analysis, and"

SIGNED _____
Amendment Sponsor

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Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-72 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

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NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-72 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

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NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-76 [v.3]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

Date _____,2010

Senator Blue

moves to amend the bill on page 3, lines 25-26
by inserting between those lines the following:
"(b1) At the time a DNA sample is taken pursuant to this section, the person obtaining the DNA sample shall record, on a form promulgated by the SBI, the date and time the sample was taken, the name of the person from whom the sample was taken, and the offense or offenses for which the person was arrested. This record shall be maintained by the arresting law enforcement agency and shall be available to the prosecuting district attorney for the purpose of completing the requirements of subsection (g) of this section. Records maintained pursuant to this subsection shall not be a public record."

And on page 3, line 51
By deleting "subsection (g):" and inserting "subsections (g) and (g1):"

And on page 4, lines 13-37
By rewriting those lines to read:
"(g) Within 30 days of the occurrence of one of the events in subdivision (1) of subsection (f) of this section, the prosecuting district attorney shall determine if a DNA sample was taken pursuant to this section, and if so, shall:

(1) Indicate the facts of the qualifying event on a verification form promulgated by the Administrative Office of the Courts.
(2) Include the last known address of the defendant, as reflected in the court files, on the verification form.
(3) Sign the verification form or, if the defendant was acquitted or the charges were dismissed by the court, obtain the signature of a judge.
(4) Transmit the verification form to the SBI.

(g1) Within 30 days of receipt of the verification form, the SBI shall:

(1) Determine whether the requirement of subdivision (2) of subsection (f) of this section has been met.
(2) If the requirement has been met, remove the defendant's DNA record and samples as required by subsection (f) of this section.
(3) Mail to the defendant, at the address specified in the verification form, a notice either:

a. Documenting expunction of the DNA record and destruction of the DNA sample, or

b. Notifying the defendant that the DNA record and sample do not qualify for expunction pursuant to subsection (f) of this section.

(g2) The defendant may file a motion with the court to review the determination that the DNA record or sample do not qualify for expunction under this section or the failure of either the prosecuting district attorney or the SBI to act within the prescribed time period."

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NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
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AMENDMENT NO._____
(to be filled in by
Principal Clerk)

S1383-ASA-76 [v.3]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

Date _____,2010

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Committee Chair if Senate Committee Amendment

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NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-76 [v.3]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-82

Date _____,2010

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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. 1303 - ASA-76 v. 3 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
(Sen.) Soles

Amendment

moves to amend the ~~bill~~ on page 1, line 5

( ) WHICH CHANGES THE TITLE

by inserting the following between "taken," and "the" on that line:

"the name of the person taking the DNA sample,";

and on page 1, line 3 by deleting "(b1)" and substituting "(b2)".

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7/7/10

S. B. No. 1383- ASA-76 v. 3 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Stein
Sen.)

amendment

moves to amend the ~~bill~~ on page 1, lines 6-7

( ) WHICH CHANGES THE TITLE

by deleting "by the arresting law enforcement agency"

and substituting "in the case file".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

AGENDA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

SENATOR MARTIN L. NESBITT, CHAIRMAN
Senator Pete Brunstetter, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman
Senator Josh Stein, Vice Chairman

Wednesday, July 7, 2010
Immediately After Session
Room 1027

1. Call Meeting to Order.

2. Recognize members, staff, and guests.

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
HB 748	Electioneering at Early Voting Sites.	Representative Ross Representative Weiss Representative Dollar Representative Stam
SB 1383	Safer Streets/DNA Initiatives.	Senator Clodfelter

Adjournment.

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 7, 2010 After Session Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Whitney Campbell	Jordan Price
Tammy Smith	NC ABC
PAIGE WORSHAM	SCHOOL OF GOVERNMENT
Colleen Kachurek	Kachurek Law Group
DAVID BARNES	Poyner Spruill
Andis Walker	SEANC
Rick Zechini	NC Assoc of Realtors
[illegible]	NJW
[illegible]	Nationwide
Susan Valcourt	NJW
Jennifer Cohen	DFNC

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 7, 2010 After Session Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Chris Agan	DOA
Annaliese Dolph	DRNC
Sarah Preston	ACLU-NC
John Palmieri	NCAOA
Wade Langdon	Brooks Pierce
Mark Blake	BPM Llp
Paul Meyer	NCLM
Lisa Martin	NC Home Builders
Doug Paris	City of Salisbury
Tommy Roberson	TWC
Kathy Hawkins	Duke Energy

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 7, 2010 After Session Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Joe Lanier	Nelson Mullins
Travis Argo	NC Sierra Club
Al Ripley	NC J Ctr

NORTH CAROLINA GENERAL ASSEMBLY

SENATE JUDICIARY I

VISITOR REGISTRATION SHEET

July 7, 2010 After Session Room 1027

NAME	FIRM OR AGENCY AND ADDRESS
Tracy Kimbrell	Parker Poe
Brad Phillips	TWC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1383
PROPOSED COMMITTEE SUBSTITUTE S1383-CSSA-83 [v.1]

7/7/2010 12:54:56 PM

Short Title: Safer Streets/DNA Initiatives. (Public)

Sponsors:

Referred to:

May 26, 2010

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON ARRESTED FOR COMMITTING CERTAIN OFFENSES, AND TO AMEND THE STATUTES THAT PROVIDE FOR A DNA SAMPLE UPON CONVICTION.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as "The DNA Database Act of 2010."

SECTION 2. G.S. 15A-266.2 reads as rewritten:

"**§ 15A-266.2. Definitions.**

As used in this Article, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) "CODIS" means the FBI's national DNA identification index system that allows the storage and exchange of DNA records submitted by federal, State and local forensic DNA laboratories. The term "CODIS" is derived from Combined DNA Index ~~System.~~System (NDIS) administered and operated by the Federal Bureau of Investigation.

(1a) "Custodial Agency" means the governmental entity in possession of evidence collected as part of a criminal investigation or prosecution. ~~This term includes a central evidence storage facility operated by a State agency.~~

(2) "DNA" means deoxyribonucleic acid. DNA is located in the ~~nucleus of~~ cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

(3) "DNA Record" means DNA identification information stored in the State DNA Database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA ~~typing tests.~~ analysis. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification ~~tests~~ analyses on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.

(4) "DNA Sample" ~~in this Article~~ means ~~a~~ blood, ~~buccal,~~ cheek swabs, or any ~~other~~ biological sample containing cells provided by any person with respect to ~~convicted of~~ offenses covered by this Article or submitted to the ~~SBI~~

~~Laboratory~~ State Bureau of Investigation pursuant to this Article for analysis pursuant to a criminal ~~investigation.~~investigation or storage or both.

(5) "FBI" means the Federal Bureau of Investigation.

(5a) "NDIS" means the National DNA Index System that is the national DNA database system of DNA ~~profile~~ records ~~which~~ that meet federal quality assurance and privacy standards.

(6) "SBI" means the State Bureau of Investigation. The SBI is responsible for the ~~policy management~~ policy, management, and administration of the State DNA identification record system to support law ~~enforcement, and for liaison with the FBI regarding the State's participation in CODIS.~~enforcement and other criminal justice agencies.

(7) "State DNA Database" means the SBI's DNA identification record system to support law enforcement. It is administered by the SBI and provides DNA records to the FBI for storage and maintenance in CODIS. The SBI's DNA Database system is the collective capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related ~~to forensic casework, to convicted offenders required to provide a DNA sample under this Article, and to anonymous DNA records used for research or quality control.~~ to: forensic casework; convicted offenders, and arrestees required to provide a DNA sample under this Article; persons required to register as sex offenders under G.S. 14-208.7; unidentified persons or body parts; missing persons; relatives of missing persons; and anonymous DNA profiles used for forensic validation, forensic protocol development, or quality control purposes or establishment of a population statistics database for use by criminal justice agencies.

(8) "State DNA Databank" means the repository of DNA samples collected under the provisions of this Article.

(9) "Criminal Justice Agency" means an agency or institution of a federal, State, or local government, other than the office of the public defender, that performs as part of its principal function, activities relating to the apprehension, investigation, prosecution, adjudication, incarceration, supervision, or rehabilitation of criminal offenders.

(10) "Arrestee" means any person arrested for an offense in G.S. 15A-266.3A(d) or (e).

(11) "Conviction" includes a conviction by a jury or a court, a guilty plea, a plea of nolo contendere, or a finding of not guilty by reason of insanity or mental disease or defect."

SECTION 3. G.S. 15A-266.3 reads as rewritten:

"**§ 15A-266.3. ~~Procedural compatibility with the FBI.~~Establishment of State DNA database and databank.**

~~The DNA identification system as established by the SBI shall be compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory equipment, supplies, and computer software.~~ There is established under the administration of the SBI, the State DNA database and State DNA databank. The SBI shall provide DNA records to the FBI for the searching of DNA records nationwide and storage and maintenance by CODIS. The State DNA databank shall serve as the repository for DNA samples obtained pursuant to this Article. The State DNA database shall be compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory and computer equipment, supplies and computer platform and software. The State DNA database shall have the capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related to all of the following:

(1) Crime scene evidence and forensic casework.
(2) Arrestees, offenders, and persons found not guilty by reason of insanity, who are required to provide a DNA sample under this Article.
(3) Persons required to register as sex offenders under G.S. 14-208.7.
(4) Unidentified persons or body parts.
(5) Missing persons.
(6) Relatives of missing persons.
(7) Anonymous DNA profiles used for forensic validation, forensic protocol development, or quality control purposes or establishment of a population statistics database, for use by criminal justice agencies."

SECTION 4. Article 13 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-266.3A. DNA sample required for DNA analysis upon arrest for certain offenses.**

(a) Unless a DNA sample has previously been obtained by lawful process and the DNA record stored in the State DNA Database, and that record and sample has not been expunged pursuant to any provision of law, a DNA sample for DNA analysis and testing shall be obtained from any person who is arrested for committing an offense described in subsection (d) or (e) of this section.

(b) The arresting law enforcement officer shall obtain, or cause to be obtained, a DNA sample from an arrested person at the time of arrest, or when fingerprinted. However, if the person is arrested without a warrant, then the DNA sample shall not be taken until a probable cause determination has been made pursuant to G.S. 15A-511(c)(1). The DNA sample shall be by cheek swab unless a court order authorizes that a DNA blood sample be obtained. If a DNA blood sample is taken, it shall comply with the requirements of G.S. 15A-266.6(b). The arresting law enforcement officer shall forward, or cause to be forwarded, the DNA sample to the appropriate laboratory for DNA analysis and testing.

(b1) After taking a DNA sample from an arrested person required to provide a DNA sample pursuant to this section, the person taking the DNA sample shall provide the arrested person with a written notice of the procedures for seeking an expunction of the DNA sample pursuant to subsections (f) and (g) of this section. The Department of Justice shall develop, and distribute to all law enforcement agencies in the State, the written notice required by this subsection.

(c) The DNA record of identification characteristics resulting from the DNA testing and the DNA sample itself shall be stored and maintained by the SBI in the State DNA Databank pursuant to this Article.

(d) This section shall apply to a person arrested for violating G.S. 20-106, Receiving or transferring stolen vehicles, or any one of the following offenses in Chapter 14 of the General Statutes:

(1) G.S. 14-17, First and Second Degree Murder.
(2) G.S. 14-18, Manslaughter.
(3) Any offense in Article 7A, Rape and Other Sex Offenses.
(4) Any offense punishable as a felony in Article 8, Assaults; and G.S. 14-32.1, Assault on a Handicapped Person.
(5) Any offense in Article 10, Kidnapping and Abduction, or Article 10A, Human Trafficking.
(6) Any offense in Article 14, Burglary.
(7) Any offense in Article 15, Arson.
(8) Any offense in Article 17, Robbery.
(9) Any offense which would require the person to register under the provisions of Article 27A of Chapter 14 of the General Statutes, Sex Offender and Public Protection Registration Programs.

(10) G.S. 14-277.3A, Stalking.

(e) This section shall also apply to a person arrested for attempting, solicitation of another to commit, conspiracy to commit, or aiding and abetting another to commit, any of the violations included in subsection (d) of this section.

(f) The State Bureau of Investigation shall remove a person's DNA record, and destroy any DNA biological samples that may have been retained, from the State DNA Database and DNA Databank if both of the following are determined pursuant to subsection (g):

(1) As to the charge, or all charges, resulting from the arrest upon which a DNA sample is required under this section, a court or the district attorney has taken action resulting in any one of the following:

a. The charge has been dismissed.

b. The person has been acquitted of the charge.

c. No charge was filed within the statute of limitations, if any.

d. No conviction has occurred, and at least three years has passed since the date of arrest.

(2) The person's DNA record is not required to be in the State DNA Database under some other provision of law, or is not required to be in the State DNA Database based upon an offense from a different transaction or occurrence from the one which was the basis for the person's arrest.

(g) Subject to the requirements of subsection (f) of this section, the defendant or the defendant's counsel shall provide the prosecuting district attorney with a signed request form, promulgated by the Administrative Office of the Courts, requesting that the defendant's DNA record be expunged from the DNA Database and that any biological samples in the DNA Databank be destroyed.

Upon receipt of the request form from the defendant or the defendant's counsel, the district attorney shall (i) determine whether one of the actions in subdivision (1) of subsection (f) of this section has occurred, and if so, (ii) sign the request form or, if the defendant was acquitted or the charges were dismissed by the court, provide the request form for signature by a judge, and (iii) transmit the request form to the SBI no later than 30 days following receipt of the form. If the district attorney determines that none of the actions in subdivision (1) of subsection (f) of this section have occurred, then no later than 30 days following receipt of the request form, the district attorney shall mail to the defendant, at the address specified in the request form, a notice that the DNA record and sample does not qualify for expunction.

Upon receipt of the request form from the district attorney, the SBI shall, within 30 days of receipt of the form, (i) determine whether the requirement of subdivision (2) of subsection (f) of this section has been met, and if so, (ii) remove the person's DNA record and samples as required by subsection (f) of this section. The SBI shall, within 30 days of receipt of the request form, mail to the defendant, at the address specified in the request form, a notice either, (i) documenting expunction of the DNA record and destruction of the DNA sample, or (ii) notifying the defendant that the DNA record and sample do not qualify for expunction pursuant to subsection (f) of this section.

The defendant may file a motion with the court to review the denial of the defendant's request or the failure of either the district attorney or the SBI to act within the prescribed time period.

(h) Any identification, warrant, probable cause to arrest, or arrest based upon a database match of the defendant's DNA sample which occurs after the expiration of the statutory periods prescribed for expunction of the defendant's DNA sample, shall be invalid and inadmissable in the prosecution of the defendant for any criminal offense.

(i) If the defendant is either found guilty of, or pleads guilty or nolo contendere to, a misdemeanor offense that is a lesser-included offense of the charge upon which the DNA sample was based, the DNA record and sample shall be expunged, unless the lesser-included

misdemeanor offense is an offense included in subsection (d) or (e) of this section. A DNA record and sample shall not be expunged under this section if the defendant is either found guilty of, or pleads guilty or nolo contendere to, a felony offense.

(j) Notwithstanding subsection (f) of this section, the SBI is not required to destroy or remove an item of physical evidence obtained from a sample if evidence relating to another person would thereby be destroyed.

(k) The SBI shall adopt procedures to comply with this section."

SECTION 5. G.S. 15A-266.4 reads as rewritten:

"**§ 15A-266.4. ~~Blood sample~~DNA sample required for DNA analysis upon conviction or finding of not guilty by reason of insanity.**

(a) Unless a DNA sample has previously been obtained by lawful process and a record stored in the State DNA ~~database,~~Database, and that ~~sample has~~record and sample have not been expunged pursuant to ~~G.S. 15A-148, on or after December 1, 2003, a person~~any provision of law, a person:

(1) ~~who~~ Who is convicted of any of the crimes listed in subsection (b) of this section or who is found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with ~~G.S. 15A-1321~~G.S. 15A-1321, shall ~~have~~ provide a DNA sample ~~drawn~~ upon intake to jail, prison, or the mental health facility. In addition, every person convicted ~~on or after December 1, 2003,~~ of any of these crimes, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence.

(2) ~~A person who~~Who has been convicted and incarcerated as a result of a conviction of one or more of ~~these crimes prior to December 1, 2003,~~the crimes listed in subsection (b) of this section, or who was found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with ~~G.S. 15A-1321 before December 1, 2003,~~G.S. 15A-1321, shall ~~have~~ provide a DNA sample ~~drawn~~ before parole or release from the penal system or before release from the mental health facility.

(b) Crimes covered by this Article include all of the following:

(1) All felonies.

~~(2) G.S. 14-32.1 Assaults on handicapped persons.~~

(3) ~~G.S. 14-277.3A or former~~Former G.S. 14-277.3 – Stalking.

~~(4) G.S. 14-27.5A Sexual battery.~~

(5) All offenses described in G.S. 15A-266.3A."

SECTION 6. G.S. 15A-266.5 reads as rewritten:

"**§ 15A-266.5. Tests to be performed on ~~blood sample.~~DNA sample.**

(a) The tests to be performed on each ~~blood~~ DNA sample are:

(1) To analyze and type only the genetic markers that are used for identification purposes contained in or derived from the DNA.

(2) For law enforcement identification purposes.

(3) For research and administrative purposes, including:

a. Development of a population database when personal identifying information is removed.

b. To support identification research and protocol development of forensic DNA analysis methods.

c. For quality control purposes.

d. To assist in the recovery or identification of human remains from mass disasters or for other humanitarian purposes, including identification of missing persons.

(b) The DNA record of identification characteristics resulting from the DNA testing shall be stored and maintained by the SBI in the State DNA Database. The DNA sample itself will be stored and maintained by the SBI in the State DNA Databank.

(c) The SBI shall report annually to the Joint Legislative Commission on Governmental Operations and to the Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee, on or before February 1, with information for the previous calendar year, which shall include: a summary of the operations and expenditures relating to the DNA Database and DNA Databank; the number of DNA records from arrestees entered; the number of DNA records from arrestees that have been expunged; and the number of DNA arrestee matches or hits that occurred with an unknown sample, and how many of those have led to an arrest and conviction; and how many letters notifying defendants that a record and sample have been expunged, along with the number of days it took to complete the expunction and notification process, from the date of the receipt of the verification form from the State."

SECTION 7. G.S. 15A-266.6 reads as rewritten:

"**§ 15A-266.6. Procedures for ~~withdrawal of blood sample for~~ obtaining DNA ~~analysis.~~sample for analysis; refusal to provide sample.**

(a) Each DNA sample ~~required to be drawn~~ provided pursuant to G.S. 15A-266.4 from persons who are incarcerated shall be ~~drawn~~ obtained at the place of incarceration. DNA samples from persons who are not sentenced to a term of confinement shall be ~~drawn~~ obtained immediately following sentencing. The sentencing court shall order any person not sentenced to a term of ~~confinement~~ confinement, who has not previously provided a DNA sample pursuant to any provision of law requiring a sample and whose DNA record and sample have not been expunged pursuant to law, to report immediately following sentencing to the location designated by the sheriff. If the sample cannot be taken immediately, the sheriff shall inform the court of the date, time, and location at which the sample shall be taken, and the court shall enter that date, time, and location into its order. A copy of the court order indicating the date, time, and location the person is to appear to have a sample taken shall be given to the sheriff. If a person not sentenced to a term of confinement fails to appear immediately following sentencing or at the date, time, and location designated in the court order, the sheriff shall inform the court of the failure to appear and the court may issue an order to show cause pursuant to G.S. 5A-15 and may issue an order for arrest pursuant to G.S. 5A-16. The defendant shall continue to be subject to the court's order to provide a DNA sample until such time as his or her DNA sample is analyzed and a record is successfully entered into the State DNA Database.

(b) If, for any reason, the defendant provides a DNA blood sample instead of a cheek swab, ~~Only~~ only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory technician, phlebotomist, or other health care worker with phlebotomy training shall draw ~~any~~ the DNA blood sample to be submitted for analysis. No civil liability shall attach to any person authorized to draw blood by this section as a result of drawing blood from any person if the blood was drawn according to recognized medical procedures. No person shall be relieved from liability for negligence in ~~the drawing of any~~ obtaining a DNA ~~sample.~~sample by any method.

(c) The SBI shall provide ~~to the sheriff the materials and supplies~~the materials, supplies, and postage pre-paid envelopes necessary to ~~draw~~ obtain a DNA sample from a person ~~not sentenced to a term of confinement.~~required to provide a DNA sample pursuant to this Article and to forward the DNA sample to the appropriate laboratory for DNA analysis and testing. Any DNA sample ~~drawn from a person not sentenced to a term of confinement~~obtained pursuant to this Article, other than a DNA sample obtained from a person who is incarcerated, shall be taken using the materials and supplies provided by the SBI.

(d) Duly authorized law enforcement and corrections personnel may employ reasonable force in cases where an individual refuses to provide a DNA sample required under this Article, and no such employee shall be civilly or criminally liable for the use of such reasonable force.

(e) Any person who is subject to the requirements of this Article, and who, after receiving notification of the requirement to provide a DNA sample, knowingly refuses to provide such DNA sample, shall be guilty of a Class A1 misdemeanor."

SECTION 8. G.S. 15A-266.7 reads as rewritten:

"**§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood~~ DNA sample.**

~~The SBI shall adopt rules governing the procedures to be used in the submission, identification, analysis, and storage of DNA samples and typing results of DNA samples submitted under this Article. The DNA sample shall be securely stored in the State Databank. The typing results shall be securely stored in the State Database. These procedures shall also include quality assurance guidelines to insure that DNA identification records meet standards and audit standards for laboratories which submit DNA records to the State Database. Records of testing shall be retained on file at the SBI.~~

(a) The SBI shall:

(1) Adopt procedures to be used in the collection, security, submission, identification, analysis, and storage of DNA samples and typing results of DNA samples submitted under this Article. These procedures shall also include quality assurance guidelines to insure that DNA identification records meet audit standards for laboratories which submit DNA records to the State DNA Database.

(2) Adopt Quality Assurance Guidelines for DNA Testing Laboratories and DNA Databasing Laboratories that meet or exceed the quality assurance guidelines established for such laboratories by the CODIS unit of the Federal Bureau of Investigation.

(b) DNA samples shall be securely stored in the State DNA Databank. The typing results shall be securely stored in the State DNA Database.

(c) Records of testing shall be retained on file at the SBI."

SECTION 9. G.S. 15A-266.8 reads as rewritten:

"**§ 15A-266.8. DNA database exchange.**

(a) It shall be the duty of the SBI to receive DNA samples, to store, to analyze or to contract out the DNA typing analysis to a qualified DNA laboratory that meets the guidelines as established by the SBI, classify, and file the DNA record of identification characteristic profiles of DNA samples submitted pursuant to ~~G.S. 15A-266.7~~ this Article and to make such information available as provided in this section. The SBI may contract out DNA typing analysis to a qualified DNA laboratory that meets guidelines as established by the SBI. The results of the DNA profile of individuals in the State Database shall be made available to local, State, or federal law enforcement agencies, approved crime laboratories which serve these agencies, or the district attorney's office upon written or electronic request and in furtherance of an official investigation of a criminal offense. These records shall also be available upon receipt of a valid court order directing the SBI to release these results to appropriate parties not listed above, when the court order is signed by a superior court judge after a hearing. The SBI shall maintain a file of such court orders.

(b) The SBI shall adopt rules governing the methods of obtaining information from the State Database and CODIS and procedures for verification of the identity and authority of the requester.

(c) The SBI shall create a separate population database comprised of ~~blood~~ DNA samples obtained under this Article, after all personal identification is removed. Nothing shall prohibit the SBI from sharing or disseminating population databases with other law enforcement agencies, crime laboratories that serve them, or other third parties the SBI deems

necessary to assist the SBI with statistical analysis of the SBI's population databases. The population database may be made available to and searched by other agencies participating in the CODIS system."

SECTION 10. G.S. 15A-266.11 reads as rewritten:

"**§ 15A-266.11. Unauthorized uses of DNA Databank; penalties.**

(a) Any person ~~who, by virtue of employment, or official position,~~who has possession of, or access to, individually identifiable DNA information contained in the State DNA Database or Databank and who willfully discloses it in any manner to any person or agency not entitled to receive it is guilty of a ~~Class 1 misdemeanor in accordance with G.S. 14-3.~~Class H felony.

(b) Any person who, without authorization, willfully obtains individually identifiable DNA information from the State DNA Database or Databank is guilty of a ~~Class 1 misdemeanor in accordance with G.S. 14-3.~~Class H felony."

SECTION 11. G.S. 15A-266.12 reads as rewritten:

"**§ 15A-266.12. Confidentiality of records.**

(a) All DNA profiles and samples submitted to the SBI pursuant to this Article shall be treated as confidential and shall not be disclosed to or shared with any person or agency except as provided in G.S. 15A-266.8.

(b) Only DNA records and samples that directly relate to the identification of individuals shall be collected and stored. These records and samples shall solely be used as a part of the criminal justice system for the purpose of facilitating the personal identification of the perpetrator of a criminal offense; provided that in appropriate circumstances such records may be used to identify potential victims of mass disasters or missing persons.

(c) DNA records and DNA samples submitted to the SBI pursuant to this Article are not a public record as defined by G.S. 132-1.

(d) In the case of a criminal proceeding, requests to access a person's DNA record shall be in accordance with the rules for criminal discovery as defined in G.S. 15A-902. The SBI shall not be required to provide the State DNA Database for criminal discovery purposes.

(e) DNA records and DNA samples submitted to the SBI may only be released for the following authorized purposes:

(1) For law enforcement identification purposes, including the identification of human remains, to federal, State, or local criminal justice agencies.

(2) For criminal defense and appeal purposes, to a defendant who shall have access to samples and analyses performed in connection with the case in which such defendant is charged or was convicted.

(3) If personally identifiable information is removed to local, State, or federal law enforcement agencies for forensic validation studies, forensic protocol development or quality control purposes, and for establishment or maintenance of a population statistics database.

(f) In order to maintain the computer system security of the SBI DNA database program, the computer software and database structures used by the SBI to implement this Article are confidential."

SECTION 12. Article 23 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-502A. DNA sample upon arrest.**

A DNA sample shall be obtained from any person arrested for an offense designated under G.S. 15A-266.3A, in accordance with the provisions contained in Article 13 of Chapter 15A of the General Statutes."

SECTION 13. G.S. 7B-2201 reads as rewritten:

"**§ 7B-2201. Fingerprinting and DNA sample from juvenile transferred to superior court.**

(a) When jurisdiction over a juvenile is transferred to the superior court, the juvenile shall be fingerprinted and the juvenile's fingerprints shall be sent to the State Bureau of Investigation.

(b) When jurisdiction over a juvenile is transferred to the superior court, a DNA sample shall be taken from the juvenile if any of the offenses for which the juvenile is transferred are included in the provisions of G.S. 15A-266.3A."

SECTION 14. This act becomes effective January 1, 2011.

SENATE BILL 1400:
No Foreclosure/Soldiers on Active Duty/Funds

2009-2010 General Assembly

Committee:	Senate Ref to Judiciary I. If fav, re-ref to Appropriations/Base Budget	**Date:**	July 7, 2010
Introduced by:	Sen. Davis	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to First Edition S1400-CSTG-53		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1400 would prohibit foreclosures under a power of sale during a mortgagor's or trustor's period of military service. The PCS deletes Section 4 of the bill, which appropriated funds for advertising of the act's protections by the Commissioner of Banks.***

CURRENT LAW: There currently is no North Carolina statute limiting foreclosure by mortgagees or trustees under a power of sale contained in any mortgage or deed of trust, or provided by statute, during a mortgagor's or trustor's period of military service. Some protection against foreclosures is provided to servicemembers under federal law (Servicemembers Civil Relief Act, 50 U.S.C. App. 501, et. seq.)

BILL ANALYSIS:

Section 1. This section adds a new section G.S. 4-21.12A to Article 2A of Chapter 45 of the General Statutes dealing with foreclosures under a power of sale.

Subsection (a) prohibits foreclosing parties from exercising a power of sale during a period of military service. It also prohibits clerks of court from proceeding with a hearing to authorize the sale unless the foreclosing party first files a certification that the debtor is not on active military duty. Finally, this section clarifies that these limitations only apply to mortgages that originated prior to the debtor's period of military service.

Subsection (b) clarifies that the purpose of the bill is to supplement the federal Servicemembers Civil Relief Act.

Subsection (c) contains definitions, substantively identical to their counterparts in the Servicemembers Civil Relief Act.

Section 2. G.S. 45-21.16 requires that persons whose property will be foreclosed upon under a power of sale receive notice of certain things prior to the hearing at which the clerk of court will determine if the foreclosure may go forward. Section 2 of the bill requires that one of the things the debtor be informed of is the fact that foreclosure may be prohibited by G.S. 45-21.12A if the debtor is on military duty.

Section 3. Section 3 of the bill requires that the clerk not approve a power of sale foreclosure unless the clerk first determines that the sale is not barred by G.S. 45-21.12A.

EFFECTIVE DATE: This act is effective when it becomes law and applies to foreclosures initiated on or after that date.

S1400-SMTG-102(CSTG-53) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1400
PROPOSED COMMITTEE SUBSTITUTE S1400-CSTG-53 [v.1]

7/7/2010 5:53:49 PM

Short Title: No Foreclosure/Soldiers on Active Duty/Funds. (Public)

Sponsors:

Referred to:

May 26, 2010

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT FORECLOSURES WHILE MORTGAGORS OR TRUSTORS ARE ON ACTIVE MILITARY DUTY.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 2A of Chapter 45 of the General Statutes is amended by adding a new section to read:

"**§ 45-21.12A. Power of sale barred during periods of military service.**

(a) Power of Sale Barred. – A mortgagee or trustee shall not exercise a power of sale contained in a mortgage or deed of trust, or provided by statute, during a mortgagor's or trustor's period of military service. The clerk of court shall not conduct a hearing pursuant to G.S. 45-21.16(d) unless the mortgagee or trustee seeking to exercise a power of sale under a mortgage or deed of trust files with the clerk a certification that the hearing will take place at a time that is not during a period of military service for the mortgagor or trustor. This subsection applies only to mortgages and deeds of trust that originated before the mortgagor's or trustor's period of military service.

(b) Purpose. – The purpose of this section is to supplement and complement the provisions of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501, et seq., and to afford greater peace and security for persons in federal active duty.

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

(1) Military service. –

a. In the case of a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard:

1. Active duty, as defined in 10 U.S.C. § 101(d)(1); and

2. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 10 U.S.C. § 502(f), for purposes of responding to a national emergency declared by the President and supported by federal funds.

b. In the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service, and

c. Any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) Period of military service. – The period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

(3) Servicemember. – A member of the Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the National Oceanic and Atmospheric Administration, or the commissioned corps of the Public Health Service."

SECTION 2. G.S. 45-21.16(c) is amended by adding a new subdivision to read:

"(c) Notice shall be in writing and shall state in a manner reasonably calculated to make the party entitled to notice aware of the following:

...

(12) That if the debtor is currently on military duty the foreclosure may be prohibited by G.S. 45-21.12A."

SECTION 3. G.S. 45-21.16(d) reads as rewritten:

"(d) **(Effective until October 31, 2010)** The hearing provided by this section shall be held before the clerk of court in the county where the land, or any portion thereof, is situated. In the event that the property to be sold consists of separate tracts situated in different counties or a single tract in more than one county, only one hearing shall be necessary. However, prior to that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the evidence of the parties and may consider, in addition to other forms of evidence required or permitted by law, affidavits and certified copies of documents. If the clerk finds the existence of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, (iv) notice to those entitled to such under subsection (b), ~~and~~ (v) that the underlying mortgage debt is not a subprime loan as defined in G.S. 45-101(4), or if the loan is a subprime loan under G.S. 45-101(4), that the pre-foreclosure notice under G.S. 45-102 was provided in all material respects, and that the periods of time established by Article 11 of this Chapter have elapsed, and (vi) that the sale is not barred by G.S. 45-21.12A, then the clerk shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A certified copy of any authorization or order by the clerk shall be filed in any other county where any portion of the property to be sold is located before the mortgagee or trustee may proceed to advertise and sell any property located in that county. In the event that sales are to be held in more than one county, the provisions of G.S. 45-21.7 apply.

(d) **(Effective October 31, 2010)** The hearing provided by this section shall be held before the clerk of court in the county where the land, or any portion thereof, is situated. In the event that the property to be sold consists of separate tracts situated in different counties or a single tract in more than one county, only one hearing shall be necessary. However, prior to that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the evidence of the parties and may consider, in addition to other forms of evidence required or permitted by law, affidavits and certified copies of documents. If the clerk finds the existence of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, and (iv) notice to those entitled to such under subsection (b), and (v) that the sale is not barred by G.S. 45-21.12A, then the clerk shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A certified copy of any authorization or order by the clerk shall be filed in any other county where any portion of the property to be sold is located before the mortgagee or trustee may proceed to advertise and sell

any property located in that county. In the event that sales are to be held in more than one county, the provisions of G.S. 45-21.7 apply."

SECTION 4. This act is effective when it becomes law and applies to foreclosures initiated on or after that date.

SENATE BILL 1400:
No Foreclosure/Soldiers on Active Duty/Funds

2009-2010 General Assembly

Committee:	Senate Ref to Judiciary I. If fav, re-ref to Appropriations/Base Budget	**Date:**	July 7, 2010
Introduced by:	Sen. Davis	**Prepared by:**	Bill Patterson Committee Counsel
Analysis of:	PCS to First Edition S1400-CSTG-53		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1400 would prohibit foreclosures under a power of sale during a mortgagor's or trustor's period of military service. The PCS deletes Section 4 of the bill, which appropriated funds for advertising of the act's protections by the Commissioner of Banks.***

CURRENT LAW: There currently is no North Carolina statute limiting foreclosure by mortgagees or trustees under a power of sale contained in any mortgage or deed of trust, or provided by statute, during a mortgagor's or trustor's period of military service. Some protection against foreclosures is provided to servicemembers under federal law (Servicemembers Civil Relief Act, 50 U.S.C. App. 501, et. seq.)

BILL ANALYSIS:

Section 1. This section adds a new section G.S. 4-21.12A to Article 2A of Chapter 45 of the General Statutes dealing with foreclosures under a power of sale.

Subsection (a) prohibits foreclosing parties from exercising a power of sale during a period of military service. It also prohibits clerks of court from proceeding with a hearing to authorize the sale unless the foreclosing party first files a certification that the debtor is not on active military duty. Finally, this section clarifies that these limitations only apply to mortgages that originated prior to the debtor's period of military service.

Subsection (b) clarifies that the purpose of the bill is to supplement the federal Servicemembers Civil Relief Act.

Subsection (c) contains definitions, substantively identical to their counterparts in the Servicemembers Civil Relief Act.

Section 2. G.S. 45-21.16 requires that persons whose property will be foreclosed upon under a power of sale receive notice of certain things prior to the hearing at which the clerk of court will determine if the foreclosure may go forward. Section 2 of the bill requires that one of the things the debtor be informed of is the fact that foreclosure may be prohibited by G.S. 45-21.12A if the debtor is on military duty.

Section 3. Section 3 of the bill requires that the clerk not approve a power of sale foreclosure unless the clerk first determines that the sale is not barred by G.S. 45-21.12A.

EFFECTIVE DATE: This act is effective when it becomes law and applies to foreclosures initiated on or after that date.

S1400-SMTG-102(CSTG-53) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1400
PROPOSED COMMITTEE SUBSTITUTE S1400-CSTG-53 [v.1]

7/7/2010 5:53:49 PM

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(a) Power of Sale Barred. – A mortgagee or trustee shall not exercise a power of sale contained in a mortgage or deed of trust, or provided by statute, during a mortgagor's or trustor's period of military service. The clerk of court shall not conduct a hearing pursuant to G.S. 45-21.16(d) unless the mortgagee or trustee seeking to exercise a power of sale under a mortgage or deed of trust files with the clerk a certification that the hearing will take place at a time that is not during a period of military service for the mortgagor or trustor. This subsection applies only to mortgages and deeds of trust that originated before the mortgagor's or trustor's period of military service.

(b) Purpose. – The purpose of this section is to supplement and complement the provisions of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501, et seq., and to afford greater peace and security for persons in federal active duty.

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

(1) Military service. –

a. In the case of a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard:

1. Active duty, as defined in 10 U.S.C. § 101(d)(1), and

2. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 10 U.S.C. § 502(f), for purposes of responding to a national emergency declared by the President and supported by federal funds.

b. In the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service, and

c. Any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) Period of military service. – The period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

(3) Servicemember. – A member of the Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the National Oceanic and Atmospheric Administration, or the commissioned corps of the Public Health Service."

SECTION 2. G.S. 45-21.16(c) is amended by adding a new subdivision to read:

"(c) Notice shall be in writing and shall state in a manner reasonably calculated to make the party entitled to notice aware of the following:

...

(12) That if the debtor is currently on military duty the foreclosure may be prohibited by G.S. 45-21.12A."

SECTION 3. G.S. 45-21.16(d) reads as rewritten:

"(d) **(Effective until October 31, 2010)** The hearing provided by this section shall be held before the clerk of court in the county where the land, or any portion thereof, is situated. In the event that the property to be sold consists of separate tracts situated in different counties or a single tract in more than one county, only one hearing shall be necessary. However, prior to that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the evidence of the parties and may consider, in addition to other forms of evidence required or permitted by law, affidavits and certified copies of documents. If the clerk finds the existence of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, (iv) notice to those entitled to such under subsection (b), ~~and~~ (v) that the underlying mortgage debt is not a subprime loan as defined in G.S. 45-101(4), or if the loan is a subprime loan under G.S. 45-101(4), that the pre-foreclosure notice under G.S. 45-102 was provided in all material respects, and that the periods of time established by Article 11 of this Chapter have elapsed, and (vi) that the sale is not barred by G.S. 45-21.12A, then the clerk shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A certified copy of any authorization or order by the clerk shall be filed in any other county where any portion of the property to be sold is located before the mortgagee or trustee may proceed to advertise and sell any property located in that county. In the event that sales are to be held in more than one county, the provisions of G.S. 45-21.7 apply.

(d) **(Effective October 31, 2010)** The hearing provided by this section shall be held before the clerk of court in the county where the land, or any portion thereof, is situated. In the event that the property to be sold consists of separate tracts situated in different counties or a single tract in more than one county, only one hearing shall be necessary. However, prior to that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the evidence of the parties and may consider, in addition to other forms of evidence required or permitted by law, affidavits and certified copies of documents. If the clerk finds the existence of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, and (iv) notice to those entitled to such under subsection (b), and (v) that the sale is not barred by G.S. 45-21.12A, then the clerk shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A certified copy of any authorization or order by the clerk shall be filed in any other county where any portion of the property to be sold is located before the mortgagee or trustee may proceed to advertise and sell

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1400
PROPOSED COMMITTEE SUBSTITUTE S1400-CSTG-53 [v.1]

7/7/2010 5:53:49 PM

Short Title: No Foreclosure/Soldiers on Active Duty/Funds. (Public)

Sponsors:

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a. In the case of a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard:

1. Active duty, as defined in 10 U.S.C. § 101(d)(1); and

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c. Any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1400
PROPOSED COMMITTEE SUBSTITUTE S1400-CSTG-53 [v.1]

7/7/2010 5:53:49 PM

Short Title: No Foreclosure/Soldiers on Active Duty/Funds. (Public)

Sponsors:

Referred to:

May 26, 2010

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SECTION 4. This act is effective when it becomes law and applies to foreclosures initiated on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 748
PROPOSED SENATE COMMITTEE SUBSTITUTE H748-CSST-99 [v.8]

7/7/2010 4:19:39 PM

Short Title: Citizens United Response. (Local)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO DEFINE COORDINATION AND COORDINATED EXPENDITURE; TO REQUIRE REPORTING OF AND DISCLOSURES ON INDEPENDENT EXPENDITURES FOR POLITICAL ADVERTISEMENTS THAT IS THE SAME AS THAT OF POLITICAL COMMITTEES; TO REPEAL ARTICLES 22E AND 22F OF CHAPTER 163 OF THE GENERAL STATUTES; AND TO CLARIFY THE EXEMPTION OF POLITICAL EXPENDITURES TO THE DEFINITION OF "GIFT" UNDER THE STATE GOVERNMENT ETHICS ACT AND THE MISCELLANEOUS REPORTING UNDER CHAPTER 120C.

The General Assembly Of North Carolina enacts:

SECTION 1. G.S. 163-278.6 reads as rewritten:

"**§ 163-278.6. Definitions.**

When used in this Article:

(1) The term "board" means the State Board of Elections with respect to all candidates for State, legislative, and judicial offices and the county or municipal board of elections with respect to all candidates for county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda and the county or municipal board of elections conducting all local referenda.

(2) The term "broadcasting station" means any commercial radio or television station or community antenna radio or television station. Special definitions of "radio" and "television" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(3) The term "business entity" means any partnership, joint venture, joint-stock company, company, firm, or any commercial or industrial establishment or enterprise.

(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has taken positive action for the purpose of bringing about that individual's nomination or election to public office. Examples of positive action include:

a. Filing a notice of candidacy or a petition requesting to be a candidate,

b. Being certified as a nominee of a political party for a vacancy,

c. Otherwise qualifying as a candidate in a manner authorized by law,

d. Making a public announcement of a definite intent to run for public office in a particular election, or

e. Receiving funds or making payments or giving the consent for anyone else to receive funds or transfer anything of value for the purpose of bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value.

Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held. Special definitions of "candidate" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(5) The term "communications media" or "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, newspaper inserts, and any person or individual whose business is polling public opinion, analyzing or predicting voter behavior or voter preferences. Special definitions of "print media," "radio," and "television" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(5h) The term "coordination" means in concert or cooperation with, or at the request or suggestion of.

(5g) The term "coordinated expenditure" means an expenditure that is made in concert or cooperation with, or at the request or suggestion of, a candidate, a candidate campaign committee as defined in G.S. 163-278.38Z(3), the agent of the candidate, or the agent of the candidate campaign committee. An expenditure for the distribution of information relating to a candidate's campaign, positions, or policies, that is obtained through publicly available resources, including a candidate campaign committee, is not a coordinated expenditure if it is not made in concert or cooperation with, or at the request or suggestion of, a candidate, the candidate campaign committee, the agent of the candidate, or the agent of the candidate campaign committee.

(6) The terms "contribute" or "contribution" mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, made ~~to~~to, or in coordination with, a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, or other obligation to make a contribution. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a contribution from that person or entity. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or

referendum committee. The term "contribution" does not include an "independent expenditure." If:

a. Any individual, person, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any disbursement for any electioneering communication, as defined in ~~G.S. 163-278.80(2) and (3) and G.S. 163-278.90(2) and (3);~~ this section; and

b. That disbursement is coordinated with a candidate, an authorized political committee of that candidate, a State or local political party or committee of that party, or an agent or official of any such candidate, party, or committee

that disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party.

(7) The term "corporation" means any corporation established under either domestic or foreign charter, and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner or a joint venturer. The term applies regardless of whether the corporation does business in the State of North Carolina.

(7a) The term "costs of collection" means monies spent by the State Board of Elections in the collection of the penalties levied under this Article to the extent the costs do not constitute more than fifty percent (50%) of the civil penalty. The costs are presumed to be ten percent (10%) of the civil penalty unless otherwise determined by the State Board of Elections based on the records of expenses incurred by the State Board of Elections for its collection procedures.

(7b) The term "day" means calendar day.

(7c) The term "election cycle" means the period of time from January 1 after an election for an office through December 31 after the election for the next term of the same office. Where the term is applied in the context of several offices with different terms, "election cycle" means the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year.

(8) The term "election" means any general or special election, a first or second primary, a run-off election, or an election to fill a vacancy. The term "election" shall not include any local or statewide referendum.

(8a) The term "enforcement costs" means salaries, overhead, and other monies spent by the State Board of Elections in the enforcement of the penalties provisions of this Article, including the costs of investigators, attorneys, travel costs for State Board employees and its attorneys, to the extent the costs do not constitute more than fifty percent (50%) of the sum levied for the enforcement costs and civil late penalty.

(8j) The term "electioneering communication" means any broadcast, cable, internet, or satellite communication, or mass mailing, or telephone bank that has all the following characteristics:

a. Refers to a clearly identified candidate for elected office.

b. Is aired or transmitted within 60 days of the time set for absentee voting to begin pursuant to G.S. 163-227.2 in an election for that office.

c. May be received by either:
1. 50,000 or more individuals in the State in an election for statewide office or 7,500 or more individuals in any other election, if the in the form of broadcast, cable, internet, or satellite communication.
2. 20,000 or more households, cumulative per election, in a statewide election or 2,500 households, cumulative per election, in any other election if in the form of mass mailing or telephone bank.

(8k) The term "electioneering communication" does not include any of the following:
a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless those facilities are owned or controlled by any political party, political committee, or candidate.
b. A communication that constitutes an expenditure or independent expenditure under this Article.
c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.
d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation or a solicitation of others as defined in G.S. 120C-100(a)(13) properly reported under Chapter 120C of the General Statutes.
e. A communication that meets all of the following criteria:
1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.
2. Does not take a position on the candidate's character or qualifications and fitness for office.
3. Proposes a commercial transaction.
f. A public opinion poll conducted by a news medium, as defined in G.S. 8-53.11(a)(3), or conducted by an organization whose primary purpose is to conduct or publish public opinion polls.
g. A communication made by a news medium, as defined in G.S. 8-53.11(a)(3), if the communication is in print.

(9) The terms "expend" or "expenditure" mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, or other obligation to make an expenditure, to support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a contribution from that person or entity. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term "expenditure" also includes any payment or other transfer made by a candidate, political committee, or referendum committee.

(9a) The term "independently expend" or "independent expenditure" means an expenditure to support or oppose the nomination or election of one or more clearly identified candidates that is ~~made without consultation or coordination with a candidate or agent of a candidate whose nomination or election the expenditure supports or whose opponent's nomination or election the expenditure opposes.~~ not a coordinated expenditure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. A contribution is not an independent expenditure. As applied to referenda, the term "independent expenditure" applies if consultation or coordination does not take place with a referendum committee that supports a ballot measure the expenditure supports, or a referendum committee that opposes the ballot measure the expenditure opposes.

(10) The term "individual" means a single individual or more than one individual.

(11) The term "insurance company" means any person whose business is making or underwriting contracts of insurance, and includes mutual insurance companies, stock insurance companies, and fraternal beneficiary associations.

(12) The term "labor union" means any union, organization, combination or association of employees or workmen formed for the purposes of securing by united action favorable wages, improved labor conditions, better hours of labor or work-related benefits, or for handling, processing or righting grievances by employees against their employers, or for representing employees collectively or individually in dealings with their employers. The term includes any unions to which Article 10, Chapter 95 applies.

(12k) The term "mass mailing" means any mailing by United States mail or facsimile to 20,000 or more households, cumulative per election, in a statewide election or 2,500 households, cumulative per election, in any other election.

(13) The term "person" means any business entity, corporation, insurance company, labor union, or professional association.

(14) The term "political committee" means a combination of two or more individuals, such as any person, committee, association, organization, or other entity that makes, or accepts anything of value to make, contributions or expenditures and has one or more of the following characteristics:

a. Is controlled by a candidate;

b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;

c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b); or

d. Has the major purpose to support or oppose the nomination or election of one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

If the entity qualifies as a "political committee" under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a political committee if it receives contributions or makes expenditures or maintains assets or liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

The term "political committee" includes the campaign of a candidate who serves as his or her own treasurer.

Special definitions of "political action committee" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(15) The term "political party" means any political party organized or operating in this State, whether or not that party is recognized under the provisions of G.S. 163-96. A special definition of "political party organization" that applies only in Part 1A of this Article is set forth in G.S. 163-278.38Z.

(16) Repealed by Session Laws 1999-31, s. 4.

(17) The term "professional association" means any trade association, group, organization, association, or collection of persons or individuals formed for the purposes of advancing, representing, improving, furthering or preserving the interests of persons or individuals having a common vocation, profession, calling, occupation, employment, or training.

(18) The term "public office" means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or nonpartisan.

(18a) The term "referendum" means any question, issue, or act referred to a vote of the people of the entire State by the General Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term "referendum" includes any type of municipal, county, or special district referendum and any initiative or referendum authorized by a municipal charter or local act. A recall election shall not be considered a referendum within the meaning of this Article.

(18b) The term "referendum committee" means a combination of two or more individuals such as a committee, association, organization, or other entity or a combination of two or more business entities, corporations, insurance companies, labor unions, or professional associations such as a committee, association, organization, or other entity the primary purpose of which is to support or oppose the passage of any referendum on the ballot. If the entity qualifies as a "referendum committee" under this subdivision, it continues to be a referendum committee if it receives contributions or makes expenditures or maintains assets or liabilities. A referendum committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

(18k) The term "telephone bank" means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals.

(19) The term "treasurer" means an individual appointed by a candidate, political committee, or referendum committee as provided in G.S. 163-278.7 or G.S. 163-278.40A."

SECTION 2. G.S. 163-278.12 reads as rewritten:

"**§ 163-278.12. Special reporting of contributions and independent expenditures.**

(a) Subject to G.S. 163-278.39 and G.S. 163-278.14, individuals and other entities not otherwise prohibited from doing so may make independent expenditures. In the event an individual or other entity making independent expenditures but not otherwise required to report

them makes independent expenditures in excess of one hundred dollars ($100.00), that individual or entity shall file a statement of such independent expenditure with the appropriate board of elections in the manner prescribed by the State Board of Elections.

(b) Any entity other than an individual that is permitted to make contributions but is not otherwise required to report them shall report each contribution in excess of one hundred dollars ($100.00) with the appropriate board of elections in the manner prescribed by the State Board of Elections.

(c) In assuring compliance with subsections (a) and (b) of this section, the State Board of Elections shall require the identification of each entity making a donation of more than one hundred dollars ($100.00) to the entity filing the report if the donation was made ~~for the purpose of furtheringto further~~ the reported independent expenditure or contribution. If the donor is an individual, the statement shall also contain the principal occupation of the donor. The "principal occupation of the donor" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(d) Contributions or independent expenditures required to be reported under this section shall be reported within 30 days after they exceed one hundred dollars ($100.00) or 10 days before an election the contributions or independent expenditures affect, whichever occurs earlier.

(e) The State Board of Elections shall require subsequent reporting of independent expenditures according to the same schedule required of political committees under G.S. 163-278.9(a). An individual or person that makes an independent expenditure shall disclose by report to the State Board of Elections within 48 hours of incurring an expense of ten thousand dollars ($10,000) or more before an election but after the period covered by the last report due before that election.

(f) For the purposes of subsection (c) of this section, a donation to the entity making the independent expenditure is deemed to have been donated to further the independent expenditure if any of subdivisions (1) through (4) of this subsection apply. For purposes of this subsection, the "filer" is the entity making the independent expenditure and responsible for filing the report, or an agent of that entity. For purposes of this subsection, the "donor" is the entity donating to the filer the funds or other thing of value, or an agent of that entity.

(1) The donor designates, requests, or suggests that the donation be used for an independent expenditure or for multiple independent expenditures, and the filer agrees so to use the donation.

(2) The filer expressly solicited the donor for a donation for making or paying for an independent expenditure.

(3) The donor and the filer engaged in substantial written or oral discussion regarding the donor's making, donating, or paying for an independent expenditure.

(4) The donor or the filer knew or had reason to know of the filer's intent to make independent expenditures with the donation.

A donation shall not be deemed to be made to further an independent expenditure if the donation was a commercial transaction occurring in the ordinary course of business between the donor and the filer unless there is affirmative evidence that the amounts were donated to further an independent expenditure. In determining the amount of a donation that was made to further any particular independent expenditure, there shall be excluded any amount that was designated by the donor with respect to a different election than the election that is the subject of the independent expenditure covered by the report.

Subdivisions (1) through (4) of this subsection shall also apply to reports made under subsection (c) of this section concerning contributions. However, nothing in this section shall be interpreted to limit the effect of the prohibition on making contributions in the name of another in G.S. 163-278.14.

(g) All reports required by this section shall be filed according to rules adopted by the State Board of Elections. If the expense incurred is greater than ten thousand dollars ($10,000.00), the report shall be filed electronically. The State Board of Elections shall provide the software necessary to file the electronic report to any individual or person required to file an electronic report at no cost to that individual or person."

SECTION 3. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.12C. Special reporting of electioneering communications.**

(a) Every individual or person that incurs an expense for the direct costs of producing or airing electioneering communications aggregating in excess of five thousand dollars ($5,000) shall file the following reports with the appropriate board of elections in the manner prescribed by the State Board of Elections:

(1) The identification of the individual or person incurring the expense, of any individual or person sharing or exercising direction or control over the activities of that individual or person, and of the custodian of the books and accounts of the individual or person incurring the expense.

(2) The principal place of business of the person incurring the expense, if not an individual.

(3) The amount of each expense incurred during the period covered by the statement and the identification of the individual or person to whom the expense was incurred.

(4) The elections to which the electioneering communications pertain, if any, and the names, if known, of the candidates identified or to be identified.

(5) The names and addresses of all entities that donated, to further an electioneering communication or electioneering communications, funds or anything of value whatsoever in an aggregate amount of more than one thousand dollars ($1,000) during the reporting period. If the donor is an individual, the statement shall also contain the principal occupation of the donor. The "principal occupation of the donor" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(b) The initial report shall be filed with the State Board no later than the tenth day following the day the individual or person incurs an expense for the direct costs of producing or airing an electioneering communication. The State Board shall require subsequent reporting according to the same schedule required of political committees under G.S. 163-278.9(a). An individual or person that produces or airs an electioneering communication shall disclose by report to the State Board within 48 hours of incurring an expense of ten thousand dollars ($10,000) or more before an election but after the period covered by the last report due before that election.

(c) For the purposes of subdivision (a)(5) of this section, a donation to the entity making the electioneering communication is deemed to have been donated to further the electioneering communication if any of subdivisions (1) through (4) of this subsection apply. For purposes of this subsection, the "filer" is the entity making the electioneering communication and responsible for filing the report, or an agent of that entity. For purposes of this subsection, the "donor" is the entity donating to the filer the funds or other thing of value, or an agent of that entity.

(1) The donor designates, requests, or suggests that the donation be used for an electioneering communication or electioneering communications, and the filer agrees to use the donation for that purpose.

(2) The filer expressly solicited the donor for a donation for making or paying for an electioneering communication.

(3) The donor and the filer engaged in substantial written or oral discussion regarding the donor's making, donating, or paying for an electioneering communication.

(4) The donor or the filer knew or had reason to know of the filer's intent to make electioneering communication with the donation.

A donation shall not be deemed to be made to further an electioneering communication if the donation was a commercial transaction occurring in the ordinary course of business between the donor and the filer unless there is affirmative evidence that the amounts were donated to further an electioneering communication. In determining the amount of a donation that was made to further any particular electioneering communication, there shall be excluded any amount that was designated by the donor with respect to a different election than the election that is the subject of the electioneering communication covered by the report.

(d) All reports required by this section shall be filed according to rules adopted by the State Board. If the expense incurred is greater than ten thousand dollars ($10,000.00), the report shall be filed electronically. The State Board shall provide the software necessary to file the electronic report to any individual or person required to file an electronic report at no cost to that individual or person."

SECTION 4. G.S. 163-278.17 reads as rewritten:

"**§ 163-278.17. Statements of media outlets ~~receiving campaign expenditures.~~regarding political advertising.**

(a) Repealed by Session Laws 1985, c. 183, s. 1.

(b) Each media outlet shall require written authority for each expenditure from each candidate, treasurer or individual making or authorizing an expenditure. A candidate may authorize advertisement paid for by a treasurer appointed by the candidate. All written authorizations of expenditures signed by a candidate, treasurer or individual shall be deemed public records and copies of ~~said~~ those written authorizations shall be available for inspection during normal business hours at the office(s) of the media outlet making the publication or broadcast nearest to the place(s) of publication or broadcast.

(c) Repealed by Session Laws 1985, c. 183, s. 2.

(d) Each media outlet shall require written authority for each independent expenditure or electioneering communication from each individual or person making or authorizing an independent expenditure or electioneering communication. All written authorizations of independent expenditures or electioneering communications shall be deemed public records and copies of those written authorizations shall be available for inspection during normal business hours at the office(s) of the media outlet making the publication or broadcast nearest to the place(s) of publication or broadcast. The written authorization shall include all of the following:

(1) The name and address of the individual or person making or authorizing the independent expenditure or electioneering communication.

(2) The name and address of the registered agent, if the person is doing business in North Carolina.

(3) The information required by G.S. 163-278.39(a).

(e) All written authorizations under this section involving an expenditure, independent expenditure, or electioneering communication with a value greater than ten thousand dollars ($10,000.00) in a statewide, legislative, or judicial race shall be electronically communicated to the State Board and shall be made publicly available by the State Board.

SECTION 5. G.S. 163-278.19 reads as rewritten:

"**§ 163-278.19. Violations by corporations, business entities, labor unions, professional associations and insurance companies.**

(a) Except as provided in subsections (a2), (b), (d), (e), (f), and (g) of this section it shall be unlawful for any corporation, business entity, labor union, professional association or insurance company directly or ~~indirectly:~~indirectly do any of the following:

(1) To make any contribution to a candidate or political ~~committee or to make any expenditure to support or oppose the nomination or election of a clearly identified candidate;~~committee.

(2) To pay or use or offer, consent or agree to pay or use any of its money or property for any contribution to a candidate or political ~~committee or for any expenditure to support or oppose the nomination or election of a clearly identified candidate; or~~committee.

(3) To compensate, reimburse, or indemnify any person or individual for money or property so used or for any contribution or expenditure so ~~made;~~made.

~~and it~~It shall also be unlawful for any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company to aid, abet, advise or consent to any such ~~contribution or expenditure,~~contribution, or for any person or individual to solicit or knowingly receive any such ~~contribution or expenditure.~~ contribution. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. Any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company aiding or abetting in any contribution ~~or expenditure~~ made in violation of this section shall be guilty of a Class 2 misdemeanor, and shall in addition be liable to such corporation, business entity, labor union, professional association or insurance company for the amount of such contribution ~~or expenditure,~~ and the same may be recovered of him upon suit by any stockholder or member thereof.

(a1) A transfer of funds shall be deemed to have been a contribution ~~or expenditure~~ made indirectly if it is made to any committee or political party account, whether inside or outside this State, with the intent or purpose of being exchanged in whole or in part for any other funds to be contributed or expended in an election for North Carolina office or to offset any other funds contributed or expended in an election for North Carolina office.

(a2) Proceeds of loans made in the ordinary course of business by financial institutions may be used for contributions made in compliance with this Chapter. Financial institutions may also grant revolving credit to political committees and referendum committees in the ordinary course of business.

(b) It shall, however, be lawful for any corporation, business entity, labor union, professional association or insurance company to communicate with its employees, stockholders or members and their families on any subject; to conduct nonpartisan registration and get-out-the-vote campaigns aimed at their employees, stockholders, or members and their families; or for officials and employees of any corporation, insurance company or business entity or the officials and members of any labor union or professional association to establish, administer, contribute to, and to receive and solicit contributions to a separate segregated fund to be utilized for political purposes, and those individuals shall be deemed to become and be a political committee as that term is defined in G.S. 163-278.6(14) or a referendum committee as defined in G.S. 163-278.6(18b); provided, however, that it shall be unlawful for any such fund to make a contribution or expenditure by utilizing contributions secured by physical force, job discrimination, financial reprisals or the threat of force, job discrimination or financial reprisals, or by dues, fees, or other moneys required as a condition of membership or employment or as a requirement with respect to any terms or conditions of employment, including, without limitation, hiring, firing, transferring, promoting, demoting, or granting seniority or employment-related benefits of any kind, or by moneys obtained in any commercial transaction whatsoever.

(c) A violation of this section is a Class 2 misdemeanor. In addition, the acceptance of any contribution, ~~expenditure, payment,~~ reimbursement, ~~indemnification, or anything of value~~ or indemnification under subsection (a) shall be a Class 2 misdemeanor.

(d) Whenever a candidate or treasurer is an officer, director, stockholder, attorney, agent, or employee of any corporation, business entity, labor union, professional association or insurance company, and by virtue of his position therewith uses office space and communication facilities of the corporation, business entity, labor union, professional association or insurance company in the normal and usual scope of his employment, the fact that the candidate or treasurer receives telephone calls, mail, or visits in such office which relates to activities prohibited by this Article shall not be considered a violation under this section.

(e) Notwithstanding the prohibitions specified in this Article and Article 22 of this Chapter, a political committee organized under provisions of this Article shall be entitled to receive and the corporation, business entity, labor union, professional association, or insurance company designated on the committee's organizational report as the parent entity of the employees or members who organized the committee is authorized to give reasonable administrative support that shall include record keeping, computer services, billings, mailings to members of the committee, membership development, fund-raising activities, office supplies, office space, and such other support as is reasonably necessary for the administration of the committee.

The approximate cost of any reasonable administrative support shall be submitted to the committee, in writing, and the committee shall include that cost on the report required by G.S. 163-278.9(a)(6). Also included in the report shall be the approximate allocable portion of the compensation of any officer or employee of the corporation, business entity, labor union, professional association, or insurance company who has devoted more than thirty-five percent (35%) of his time during normal business hours of the corporation, business entity, labor union, professional association, or insurance company during the period covered by the required report. The approximate cost submitted by the parent corporation, business entity, labor union, professional association, or insurance company shall be entered on the committee's report as the final entry on its list of "contributions" and a copy of the written approximate cost received by it shall be attached.

The reasonable administrative support given by a corporation, business entity, labor union, professional association, or insurance company shall be designated on the books of the corporation, business entity, labor union, professional association, or insurance company as such and may not be treated by it as a business deduction for State income tax purposes.

(f) This section does not prohibit a contribution ~~or independent expenditure~~ by an entity that:

(1) Has as an express purpose promoting social, educational, or political ideas and not to generate business income;

(2) Does not have shareholders or other persons which have an economic interest in its assets and earnings; and

(3) Was not established by a business corporation, by an insurance company, by a business entity, including, but not limited to, those chartered under Chapter 55, Chapter 55A, Chapter 55B, or Chapter 58 of the General Statutes, by a professional association, or by a labor union and does not receive substantial revenue from such entities. Substantial revenue is rebuttably presumed to be more than ten percent (10%) of total revenues in a calendar year.

(g) If a political committee has as its only purpose accepting contributions and making expenditures to influence elections, and that political committee incorporates as a nonprofit corporation to shield its participants from liability created outside this Chapter, that political committee is not considered to be a corporation for purposes of this section. Incorporation of a

political committee does not relieve any individual, person, or other entity of any liability, duty, or obligation created pursuant to any provision of this Chapter. To obtain the benefits of this subsection, an incorporating political committee must state exactly the following language as the only purpose for which the corporation can be organized: "to accept contributions and make expenditures to influence elections as a political committee pursuant to G.S. 163-278.6(14) only." No political committee shall do business as a political committee after incorporation unless it has been certified by the State Board of Elections as being in compliance with this subsection."

SECTION 6. G.S. 163-278.22 is amended by adding a new subdivision to read:

"(15) To establish a process for determination as to whether communication is an expenditure, independent expenditure, or electioneering communication prior to the airing or distribution of that communication when so requested by an individual or person producing a communication. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall require a written determination by the Executive Director to include stated findings and an opportunity for immediate appeal to the State Board of the determination by the Executive Director."

SECTION 7. G.S. 163-278.38Z(7) reads as rewritten:

"(7) "Print media" means billboards, cards, newspapers, newspaper inserts, magazines, mass mailings, pamphlets, fliers, periodicals, and outdoor advertising facilities. ~~A "mass mailing" is a mailing with more than 500 pieces.~~"

SECTION 8. G.S. 163-278.39 reads as rewritten:

"**§ 163-278.39. Basic disclosure requirements for all political ~~campaign~~ advertisements.**

(a) Basic Requirements. – It shall be unlawful for any sponsor to sponsor an advertisement in the print media or on radio or television that constitutes an ~~expenditure~~ expenditure, independent expenditure, electioneering communication, or contribution required to be disclosed under this Article unless all the following conditions are met:

(1) It bears the legend or includes the statement: "Paid for by _____ [Name of candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor]." In television advertisements, this disclosure shall be made by visual legend.

(2) The name used in the labeling required in subdivision (1) of this subsection is the name that appears on the statement of organization as required in ~~G.S. 163-278.7(b)(1).~~G.S.163-278.7(b)(1) or G.S. 163-278.12C(a).

(3) Repealed by Session Laws 2001-353, s. 5, effective August 10, 2001.

(4) The sponsor states in the advertisement its position for or against a ballot measure, provided that this subdivision applies only if the advertisement is made for or against a ballot measure.

(5) In a print media advertisement supporting or opposing the nomination or election of one or more clearly identified candidates, the sponsor states whether it is authorized by a candidate. The visual legend in the advertisement shall state either "Authorized by [name of candidate], candidate for [name of office]" or "Not authorized by a candidate." This subdivision does not apply if the sponsor of the advertisement is the candidate the advertisement supports or that candidate's campaign committee.

(6) In a print media advertisement that identifies a candidate the sponsor is opposing, the sponsor discloses in the advertisement the name of the

candidate who is intended to benefit from the advertisement. This subdivision applies only when the sponsor coordinates or consults about the advertisement or the expenditure for it with the candidate who is intended to benefit.

(7) In a print media advertisement supporting or opposing the nomination or election of one or more clearly identified candidates that is an independent expenditure, the sponsor discloses the names of the individuals or persons making the five largest donations to the sponsor within the six month period prior to the purchase of the advertisement if those donations are required to be reported under G.S. 163-278.12.

(8) In a print media advertisement that is an electioneering communication, the sponsor discloses the names of the individuals or person making the five largest donations to the sponsor within the six month period prior to the purchase of the advertisement if those donations are required to be reported under G.S. 163-278.12C.

If an advertisement described in this section is jointly sponsored, the disclosure statement shall name all the sponsors.

(b) Size Requirements. – In a print media advertisement covered by subsection (a) of this section, the height of all disclosure statements required by that subsection shall constitute at least five percent (5%) of the height of the printed space of the advertisement, provided that the type shall in no event be less than 12 points in size. In an advertisement in a newspaper or a newspaper insert, the total height of the disclosure statement need not constitute five percent of the printed space of the advertisement if the type of the disclosure statement is at least 28 points in size. If a single advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face. In a television advertisement covered by subsection (a) of this section, the visual disclosure legend shall constitute 32 scan lines in size. In a radio advertisement covered by subsection (a) of this section, the disclosure statement shall last at least two seconds, provided the statement is spoken so that its contents may be easily understood.

(c) Misrepresentation of Authorization. – Notwithstanding G.S. 163-278.27(a), any candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor making an advertisement in the print media or on radio or television bearing any legend required by subsection (a) of this section that misrepresents the sponsorship or authorization of the advertisement is guilty of a Class 1 misdemeanor."

SECTION 9. G.S. 163-278.39A reads as rewritten:

"**§ 163-278.39A. Disclosure requirements for television and radio advertisements supporting or opposing the nomination or election of one or more clearly identified candidates.**

(a) Expanded Disclosure Requirements. – Any political ~~campaign~~ advertisement on radio or television shall comply with the expanded disclosure requirements set forth in this section. To the extent that it provides the same information required by G.S. 163-278.39, a statement made pursuant to this section satisfies the requirements of G.S. 163-278.39 for the same advertisement.

(b) Disclosure Requirements for Television. –

(1) Candidate advertisements on television. – Television advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate and containing at least the following words: "I am (or "This is____") [name of candidate], candidate for [name of office], and I (or "my campaign____")

sponsored this ad." This subdivision applies only to an advertisement that mentions the name of, shows the picture of, transmits the voice of, or otherwise refers to an opposing candidate for the same office as the sponsoring candidate.

(2) Political party advertisements on television. – Television advertisements purchased by a political party organization supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: "The [name of political party organization] sponsored this ad opposing/supporting [name of candidate] for [name of office]." The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

(3) Political action committee advertisements on television. – Television advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: "The [name of political action committee] political action committee sponsored this ad opposing/supporting [name of candidate] for [name of office]." The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1).

(4) Advertisements on television by an individual. – Television advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and I sponsored this advertisement opposing/supporting [name of candidate] for [name of office]."

(5) Advertisements on television by another sponsor. – Television advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual which supports or opposes the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] sponsored this ad." <u>If the sponsor is a corporation that has the purpose of promoting social, educational, or political ideas, the advertisement shall also include a legible listing on the screen indicating that the viewer may obtain additional information on the sponsor and the sponsor's donors from the appropriate board of elections, containing at least the following words: "For donor information contact [Name of board of elections with whom information filed]."</u>

(6) All advertisements on television. – In any television advertisement described in subdivisions (1) through (4) of this subsection, an unobscured, full-screen picture containing the disclosing individual, either in photographic form or through the actual appearance of the disclosing individual on camera, shall be featured throughout the duration of the disclosure statement.

<u>(7) Electioneering communications on television. – Television advertisements purchased by an individual that are electioneering communications shall</u>

include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and I sponsored this advertisement opposing/supporting [name of candidate] for [name of office]." Television advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual that are electioneering communications shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] sponsored this ad." If the sponsor is a corporation that has the purpose of promoting social, educational, or political ideas, the advertisement shall also include a legible listing on the screen indicating that the viewer may obtain additional information on the sponsor and the sponsor's donors from the appropriate board of elections, containing at least the following words: "For donor information contact [Name of board of elections with whom information filed]."

(c) Disclosure Requirements for Radio. –

(1) Candidate advertisements on radio. – Radio advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate and containing at least the following words: "I am (or "This is____") [name of candidate], candidate for [name of office], and this ad was paid for (or "sponsored" or "furnished") by [name of candidate campaign committee that paid for the advertisement]." This subdivision applies only to an advertisement that mentions the name of, transmits the voice of, or otherwise refers to an opposing candidate for the same office as the sponsoring candidate.

(2) Political party advertisements on radio. – Radio advertisements purchased by a political party organization supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: "This ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by [name of political party]." The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

(3) Political action committee advertisements on radio. – Radio advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: "This ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by [name of political action committee] political action committee." The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required by G.S. 163-278.7(b)(1).

(4) Advertisements on radio by an individual. – Radio advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual and containing at least the following words: "I am

[individual's name], and this ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by me."

(5) Advertisements on radio by another sponsor. – Radio advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual which supports or opposes the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] paid for (or "sponsored" or "furnished") this ad." If the sponsor is a corporation that has the purpose of promoting social, educational, or political ideas, the advertisement shall also include an aural disclosure indicating that the viewer may obtain additional information on the sponsor and the sponsor's donors from the appropriate board of elections, containing at least the following words: "For donor information contact [Name of board of elections with whom information filed]."

(6) Electioneering communication on the radio. – Radio advertisements purchased by an individual that are electioneering communications shall include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and this ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by me." Radio advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual that are electioneering communications shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] paid for (or "sponsored" or "furnished") this ad." If the sponsor is a corporation that has the purpose of promoting social, educational, or political ideas, the advertisement shall also include an aural disclosure indicating that the viewer may obtain additional information on the sponsor and the sponsor's donors from the appropriate board of elections, containing at least the following words: "For donor information contact [Name of board of elections with whom information filed]."

(d) Placement of Disclosure Statement in Television and Radio Advertisements. – In advertisements on television, a sponsor may place the disclosure statement required by this section at any point during the advertisement, except if the duration of the advertisement is more than five minutes, the disclosure statement shall be made both at the beginning and end of the advertisement. The sponsor may provide the oral disclosure statement required by this section at the same time as the visual disclosure required under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, is shown. But any visual disclosure legend shall be at least ~~32 scan lines~~ four percent (4%) of vertical picture height in size. For advertisements on radio, the placement of the oral disclosure statement shall comply with the requirements of the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

(e) Choice of Supporting or Opposing a Candidate. – In its oral disclosure statement, a sponsoring political party organization, political action committee, individual, or other noncandidate sponsor shall choose either to identify an advertisement as supporting or opposing the nomination or election of one or more clearly identified candidates.

(e1) Joint Sponsors. – If an advertisement described in this section is jointly sponsored, the disclosure statement shall name all the sponsors and the disclosing individual shall be one of those sponsors. If a candidate is one of the sponsors, that candidate shall be the disclosing

individual, and if more than one candidate is the sponsor, at least one of the candidates shall be the disclosing individual.

(f) Legal Remedy. – Pursuant to the conditions established in subdivisions (1), (2), and (3) of this subsection, a candidate for an elective office who complied with the television and radio disclosure requirements throughout that candidate's entire campaign shall have a monetary remedy in a civil action against (i) an opposing candidate or candidate committee whose television or radio advertisement violates these disclosure requirements and (ii) against any political party organization, political action committee, individual, or other sponsor whose advertisement for that elective office violates these disclosure requirements:

(1) Any plaintiff candidate in a statewide race in an action under this section shall complete and file a Notice of Complaint Regarding Failure to Disclose on Television or Radio Campaign Advertising with the State Board of Elections after the airing of the advertisement but no later than the first Friday after the Tuesday on which the election occurred. Candidates in nonstatewide races may file the notice during the same time period with one county board of elections within the electoral area in which they are candidates. The timely filing of this notice preserves the candidate's right to bring an action in superior court any time within 90 days after the election. A candidate shall bring the civil action in the county where the candidate filed the notice.

(2) Upon receiving a favorable verdict in accordance with existing law, the plaintiff candidate shall receive a monetary award of actual damages. The price of actual damages shall be calculated as the total dollar amount of television and radio advertising time that was aired and that the plaintiff candidate correctly identifies as being in violation of the disclosure requirements of this section.

The plaintiff candidate shall also receive an award that trebles the amount of actual damages if:

a. The plaintiff candidate can establish having notified or attempted to notify the sponsor of the advertisement properly by return-receipt mail about the failure of a particular advertisement or advertisements to comply with the disclosure requirements of this section, and

b. After the notice or attempted notice, the advertisement continued to be aired.

The treble damages shall be calculated from the date on which the return-receipt notice was accepted or rejected by a defendant sponsoring candidate or candidate committee, political party organization, political action committee, or individual. The plaintiff candidate or candidate committee shall send a copy of any return-receipt mailing to the relevant board of elections as provided in subdivision (1) of this subsection within five days after the notice is returned to the possession of the candidate or candidate committee.

The plaintiff candidate may bring the civil action personally or authorize his or her candidate campaign committee to bring the civil action.

(3) A candidate who violates the disclosure requirements of State law in this section and that candidate's campaign committee shall be jointly and severally liable for the payment of damages and attorneys' fees. If the candidate is held personally liable for any payment of damages or attorneys' fees, the candidate for state or local office shall not use or be reimbursed by funds from the candidate's campaign committee in paying any amount.

(g) Relation to the Communications Act of 1934. – Television advertisements by a sponsor supporting or opposing the nomination or election of one or more clearly identified candidates shall comply with the oral disclosure requirements under State law in this section. Those advertisements shall also comply with disclosure requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317 by use of visual legends. The content of those visual legends is specified by the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, and G.S. 163-278.39(a)(1). The size of those visual legends is determined by G.S. 163-278.39(b), which satisfies requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317. In the case of radio advertisements, the oral disclosure requirements under State law in this section incorporate the content requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

(h) No Additional Liability of Television or Radio Outlets. – Television or radio outlets shall not be liable under this Part for carriage of political advertisements that fail to include the disclosure requirements provided for in this Part.

(i) No Criminal Liability. – Nothing in this section regarding the disclosure requirements in subsections (b) and (c) of this section shall be relied upon or otherwise interpreted to create criminal liability."

SECTION 10. Article 22E of Chapter 163 of the General Statutes is repealed.

SECTION 11. Article 22F of Chapter 163 of the General Statutes is repealed.

SECTION 12. G.S. 163-278.62(5a) reads as rewritten:

"(5a) Electioneering communication. – As defined in ~~G.S. 163-278.80 and G.S. 163-278.90,~~ G.S. 163-278.6, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day."

SECTION 13. G.S. 163-278.96(6a) reads as rewritten:

"(6a) Electioneering communication. – As defined in ~~G.S. 163-278.80 and G.S. 163-278.90,~~G.S. 163-278.6, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day."

SECTION 14. G.S. 138A-3(15) reads as rewritten:

"(15) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, liaison personnel, or a person described under G.S. 138A-32(d)(1), (2), or (3). The following shall not be considered gifts under this subdivision:

a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.

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

c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

d. Academic or athletic scholarships based on the same criteria as applied to the public.

e. ~~Campaign contributions~~ Anything of value properly ~~received and~~ reported as required under Article 22A of Chapter 163 of the General Statutes.

f. Expressions of condolence related to a death of an individual, sent within a reasonable time of the death, if the expression is one of the following:
1. A sympathy card, letter, or note.
2. Flowers.
3. Food or beverages for immediate consumption.
4. Donations to a religious organization, charity, the State or a political subdivision of the State, not to exceed a total of two hundred dollars ($200.00) per death per donor.

SECTION 15. G.S. 120C-800(e) reads as rewritten:

"(e) This section shall not apply to any of the following:

(1) ~~Lawful campaign contributions~~Anything of value properly ~~received and~~ reported as required under Article 22A of Chapter 163 of the General Statutes.

(2) Any reportable expenditure from a designated individual's extended family member to a designated individual.

(3) Reportable expenditures associated primarily with the designated individual's employment or that designated individual's immediate family member's employment.

(4) Reportable expenditures, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(6) A scholarship paid for by a nonpartisan state, regional, national, or international legislative organization of which the General Assembly is a member or a legislator or legislative employee is a member or participant of by virtue of that legislator's or legislative employee's public position, or to an affiliated organization of that nonpartisan state, regional, national, or international organization.

SECTION 16. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 17. Sections 1 through 15 of this act becomes effective upon preclearance by the United States Department of Justice. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 748 DATE 7/7/10

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

COMMITTEE SUBSTITUTE ✓

Rep.) Stein
Sen.)

moves to amend the bill on page 7, line 23

( ) WHICH CHANGES THE TITLE

by inserting the following between "more" and "before" on that line:

"or receiving a donation of one thousand dollars ($1000) or more for making an independent expenditure";

and on page 8, line 37 by inserting the following between "more" and "before" on that line:

"or receiving a donation of one thousand dollars ($1000) or more for making an electioneering communication".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 748 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.) Stevens
Sen.)

moves to amend the bill on page 7, line 33

( ) WHICH CHANGES THE TITLE

by deleting "so"; and

page 7, line 33 by inserting

"for an independent expenditure.".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1383
PROPOSED COMMITTEE SUBSTITUTE S1383-CSSA-84 [v.1]

7/7/2010 5:45:18 PM

Short Title: Safer Streets/DNA Initiatives. (Public)

Sponsors:

Referred to:

May 26, 2010

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON ARRESTED FOR COMMITTING CERTAIN OFFENSES, AND TO AMEND THE STATUTES THAT PROVIDE FOR A DNA SAMPLE UPON CONVICTION.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as "The DNA Database Act of 2010."

SECTION 2. G.S. 15A-266.2 reads as rewritten:

"**§ 15A-266.2. Definitions.**

As used in this Article, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) "CODIS" means the FBI's national DNA identification index system that allows the storage and exchange of DNA records submitted by federal, State and local forensic DNA laboratories. The term "CODIS" is derived from Combined DNA Index ~~System.~~System (NDIS) administered and operated by the Federal Bureau of Investigation.

(1a) "Custodial Agency" means the governmental entity in possession of evidence collected as part of a criminal investigation or prosecution. ~~This term includes a central evidence storage facility operated by a State agency.~~

(2) "DNA" means deoxyribonucleic acid. DNA is located in the ~~nucleus of~~ cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

(3) "DNA Record" means DNA identification information stored in the State DNA Database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA ~~typing tests.~~ analysis. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification ~~tests~~ analyses on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.

(4) "DNA Sample" ~~in this Article~~ means ~~a~~ blood, ~~buccal,~~ cheek swabs, or any ~~other~~ biological sample containing cells provided by any person with respect to ~~convicted of~~ offenses covered by this Article or submitted to the ~~SBI~~

~~Laboratory~~ State Bureau of Investigation pursuant to this Article for analysis pursuant to a criminal ~~investigation.~~investigation or storage or both.

(5) "FBI" means the Federal Bureau of Investigation.

(5a) "NDIS" means the National DNA Index System that is the national DNA database system of DNA ~~profile~~ records ~~which~~ that meet federal quality assurance and privacy standards.

(6) "SBI" means the State Bureau of Investigation. The SBI is responsible for the ~~policy management~~ policy, management, and administration of the State DNA identification record system to support law ~~enforcement, and for liaison with the FBI regarding the State's participation in CODIS.~~enforcement and other criminal justice agencies.

(7) "State DNA Database" means the SBI's DNA identification record system to support law enforcement. It is administered by the SBI and provides DNA records to the FBI for storage and maintenance in CODIS. The SBI's DNA Database system is the collective capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related ~~to forensic casework, to convicted offenders required to provide a DNA sample under this Article, and to anonymous DNA records used for research or quality control.~~ to: forensic casework; convicted offenders, and arrestees required to provide a DNA sample under this Article; persons required to register as sex offenders under G.S. 14-208.7; unidentified persons or body parts; missing persons; relatives of missing persons; and anonymous DNA profiles used for forensic validation, forensic protocol development, or quality control purposes or establishment of a population statistics database for use by criminal justice agencies.

(8) "State DNA Databank" means the repository of DNA samples collected under the provisions of this Article.

(9) "Criminal Justice Agency" means an agency or institution of a federal, State, or local government, other than the office of the public defender, that performs as part of its principal function, activities relating to the apprehension, investigation, prosecution, adjudication, incarceration, supervision, or rehabilitation of criminal offenders.

(10) "Arrestee" means any person arrested for an offense in G.S. 15A-266.3A(d) or (e).

(11) "Conviction" includes a conviction by a jury or a court, a guilty plea, a plea of nolo contendere, or a finding of not guilty by reason of insanity or mental disease or defect."

SECTION 3. G.S. 15A-266.3 reads as rewritten:

"**§ 15A-266.3. ~~Procedural compatibility with the FBI.~~Establishment of State DNA database and databank.**

~~The DNA identification system as established by the SBI shall be compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory equipment, supplies, and computer software.~~ There is established under the administration of the SBI, the State DNA database and State DNA databank. The SBI shall provide DNA records to the FBI for the searching of DNA records nationwide and storage and maintenance by CODIS. The State DNA databank shall serve as the repository for DNA samples obtained pursuant to this Article. The State DNA database shall be compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory and computer equipment, supplies and computer platform and software. The State DNA database shall have the capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related to all of the following:

(1) Crime scene evidence and forensic casework.
(2) Arrestees, offenders, and persons found not guilty by reason of insanity, who are required to provide a DNA sample under this Article.
(3) Persons required to register as sex offenders under G.S. 14-208.7.
(4) Unidentified persons or body parts.
(5) Missing persons.
(6) Relatives of missing persons.
(7) Anonymous DNA profiles used for forensic validation, forensic protocol development, or quality control purposes or establishment of a population statistics database, for use by criminal justice agencies."

SECTION 4. Article 13 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-266.3A. DNA sample required for DNA analysis upon arrest for certain offenses.**

(a) Unless a DNA sample has previously been obtained by lawful process and the DNA record stored in the State DNA Database, and that record and sample has not been expunged pursuant to any provision of law, a DNA sample for DNA analysis and testing shall be obtained from any person who is arrested for committing an offense described in subsection (d) or (e) of this section.

(b) The arresting law enforcement officer shall obtain, or cause to be obtained, a DNA sample from an arrested person at the time of arrest, or when fingerprinted. However, if the person is arrested without a warrant, then the DNA sample shall not be taken until a probable cause determination has been made pursuant to G.S. 15A-511(c)(1). The DNA sample shall be by cheek swab unless a court order authorizes that a DNA blood sample be obtained. If a DNA blood sample is taken, it shall comply with the requirements of G.S. 15A-266.6(b). The arresting law enforcement officer shall forward, or cause to be forwarded, the DNA sample to the appropriate laboratory for DNA analysis and testing.

(b1) After taking a DNA sample from an arrested person required to provide a DNA sample pursuant to this section, the person taking the DNA sample shall provide the arrested person with a written notice of the procedures for seeking an expunction of the DNA sample pursuant to subsections (f) and (g) of this section. The Department of Justice shall provide the written notice required by this subsection.

(c) The DNA record of identification characteristics resulting from the DNA testing and the DNA sample itself shall be stored and maintained by the SBI in the State DNA Databank pursuant to this Article.

(d) This section shall apply to a person arrested for violating G.S. 20-106, Receiving or transferring stolen vehicles, or any one of the following offenses in Chapter 14 of the General Statutes:

(1) G.S. 14-17, First and Second Degree Murder.
(2) G.S. 14-18, Manslaughter.
(3) Any offense in Article 7A, Rape and Other Sex Offenses.
(4) Any offense punishable as a felony in Article 8, Assaults; and G.S. 14-32.1, Assault on a Handicapped Person.
(5) Any offense in Article 10, Kidnapping and Abduction, or Article 10A, Human Trafficking.
(6) Any offense in Article 14, Burglary.
(7) Any offense in Article 15, Arson.
(8) Any offense in Article 17, Robbery.
(9) Any offense which would require the person to register under the provisions of Article 27A of Chapter 14 of the General Statutes, Sex Offender and Public Protection Registration Programs.
(10) G.S. 14-277.3A, Stalking.

(e) This section shall also apply to a person arrested for attempting, solicitation of another to commit, conspiracy to commit, or aiding and abetting another to commit, any of the violations included in subsection (d) of this section.

(f) The State Bureau of Investigation shall remove a person's DNA record, and destroy any DNA biological samples that may have been retained, from the State DNA Database and DNA Databank if both of the following are determined pursuant to subsection (g):

(1) As to the charge, or all charges, resulting from the arrest upon which a DNA sample is required under this section, a court or the district attorney has taken action resulting in any one of the following:

a. The charge has been dismissed.

b. The person has been acquitted of the charge.

c. No charge was filed within the statute of limitations, if any.

d. No conviction has occurred, at least three years has passed since the date of arrest, and no active prosecution is occurring.

(2) The person's DNA record is not required to be in the State DNA Database under some other provision of law, or is not required to be in the State DNA Database based upon an offense from a different transaction or occurrence from the one which was the basis for the person's arrest.

(g) Subject to the requirements of subsection (f) of this section, the defendant or the defendant's counsel shall provide the prosecuting district attorney with a signed request form, promulgated by the Administrative Office of the Courts, requesting that the defendant's DNA record be expunged from the DNA Database and that any biological samples in the DNA Databank be destroyed.

Upon receipt of the request form from the defendant or the defendant's counsel, the district attorney shall (i) determine whether one of the actions in subdivision (1) of subsection (f) of this section has occurred, and if so, (ii) sign the request form or, if the defendant was acquitted or the charges were dismissed by the court, provide the request form for signature by a judge, and (iii) transmit the request form to the SBI no later than 30 days following receipt of the form. If the district attorney determines that none of the actions in subdivision (1) of subsection (f) of this section have occurred, then no later than 30 days following receipt of the request form, the district attorney shall mail to the defendant, at the address specified in the request form, a notice that the DNA record and sample does not qualify for expunction.

Upon receipt of the request form from the district attorney, the SBI shall, within 30 days of receipt of the form, (i) determine whether the requirement of subdivision (2) of subsection (f) of this section has been met, and if so, (ii) remove the person's DNA record and samples as required by subsection (f) of this section. The SBI shall, within 30 days of receipt of the request form, mail to the defendant, at the address specified in the request form, a notice either, (i) documenting expunction of the DNA record and destruction of the DNA sample, or (ii) notifying the defendant that the DNA record and sample do not qualify for expunction pursuant to subsection (f) of this section.

The defendant may file a motion with the court to review the denial of the defendant's request or the failure of either the district attorney or the SBI to act within the prescribed time period.

(h) Any identification, warrant, probable cause to arrest, or arrest based upon a database match of the defendant's DNA sample which occurs after the expiration of the statutory periods prescribed for expunction of the defendant's DNA sample, shall be invalid and inadmissable in the prosecution of the defendant for any criminal offense.

(i) If the defendant is either found guilty of, or pleads guilty or nolo contendere to, a misdemeanor offense that is a lesser-included offense of the charge upon which the DNA sample was based, the DNA record and sample shall be expunged, unless the lesser-included misdemeanor offense is an offense included in subsection (d) or (e) of this section. A DNA

record and sample shall not be expunged under this section if the defendant is either found guilty of, or pleads guilty or nolo contendere to, a felony offense.

(j) Notwithstanding subsection (f) of this section, the SBI is not required to destroy or remove an item of physical evidence obtained from a sample if evidence relating to another person would thereby be destroyed.

(k) The SBI shall adopt procedures to comply with this section."

SECTION 5. G.S. 15A-266.4 reads as rewritten:

"**§ 15A-266.4. ~~Blood sample~~DNA sample required for DNA analysis upon conviction or finding of not guilty by reason of insanity.**

(a) Unless a DNA sample has previously been obtained by lawful process and a record stored in the State DNA ~~database,~~Database, and that ~~sample has~~record and sample have not been expunged pursuant to ~~G.S. 15A-148, on or after December 1, 2003, a person~~any provision of law, a person:

(1) ~~who~~ Who is convicted of any of the crimes listed in subsection (b) of this section or who is found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with ~~G.S. 15A-1321~~G.S. 15A-1321, shall ~~have~~ provide a DNA sample ~~drawn~~ upon intake to jail, prison, or the mental health facility. In addition, every person convicted ~~on or after December 1, 2003,~~ of any of these crimes, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence.

(2) ~~A person who~~Who has been convicted and incarcerated as a result of a conviction of one or more of ~~these crimes prior to December 1, 2003,~~the crimes listed in subsection (b) of this section, or who was found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with ~~G.S. 15A-1321 before December 1, 2003,~~G.S. 15A-1321, shall ~~have~~ provide a DNA sample ~~drawn~~ before parole or release from the penal system or before release from the mental health facility.

(b) Crimes covered by this Article include all of the following:

(1) All felonies.

~~(2) G.S. 14-32.1 – Assaults on handicapped persons.~~

(3) ~~G.S. 14-277.3A or former~~Former G.S. 14-277.3 – Stalking.

~~(4) G.S. 14-27.5A – Sexual battery.~~

(5) All offenses described in G.S. 15A-266.3A."

SECTION 6. G.S. 15A-266.5 reads as rewritten:

"**§ 15A-266.5. Tests to be performed on ~~blood sample.~~DNA sample.**

(a) The tests to be performed on each ~~blood~~ DNA sample are:

(1) To analyze and type only the genetic markers that are used for identification purposes contained in or derived from the DNA.

(2) For law enforcement identification purposes.

(3) For research and administrative purposes, including:

a. Development of a population database when personal identifying information is removed.

b. To support identification research and protocol development of forensic DNA analysis methods.

c. For quality control purposes.

d. To assist in the recovery or identification of human remains from mass disasters or for other humanitarian purposes, including identification of missing persons.

(b) The DNA record of identification characteristics resulting from the DNA testing shall be stored and maintained by the SBI in the State DNA Database. The DNA sample itself will be stored and maintained by the SBI in the State DNA Databank.

(c) The SBI shall report annually to the Joint Legislative Commission on Governmental Operations and to the Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee, on or before February 1, with information for the previous calendar year, which shall include: a summary of the operations and expenditures relating to the DNA Database and DNA Databank; the number of DNA records from arrestees entered; the number of DNA records from arrestees that have been expunged; and the number of DNA arrestee matches or hits that occurred with an unknown sample, and how many of those have led to an arrest and conviction; and how many letters notifying defendants that a record and sample have been expunged, along with the number of days it took to complete the expunction and notification process, from the date of the receipt of the verification form from the State.

(d) The Department of Justice, in consultation with the Administrative Office of the Courts and the Conference of District Attorneys, shall study and develop a recommended procedure to place responsibility on the State to expunge DNA samples and records taken pursuant to G.S. 15A-266.3A, and shall report to the Joint Legislative Commission on Governmental Operations, the Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee, and the Courts Commission, on or before February 1, 2011."

SECTION 7. G.S. 15A-266.6 reads as rewritten:

"**§ 15A-266.6. Procedures for ~~withdrawal of blood sample for~~ obtaining DNA ~~analysis.~~sample for analysis; refusal to provide sample.**

(a) Each DNA sample ~~required to be drawn~~ provided pursuant to G.S. 15A-266.4 from persons who are incarcerated shall be ~~drawn~~ obtained at the place of incarceration. DNA samples from persons who are not sentenced to a term of confinement shall be ~~drawn~~ obtained immediately following sentencing. The sentencing court shall order any person not sentenced to a term of ~~confinement~~ confinement, who has not previously provided a DNA sample pursuant to any provision of law requiring a sample and whose DNA record and sample have not been expunged pursuant to law, to report immediately following sentencing to the location designated by the sheriff. If the sample cannot be taken immediately, the sheriff shall inform the court of the date, time, and location at which the sample shall be taken, and the court shall enter that date, time, and location into its order. A copy of the court order indicating the date, time, and location the person is to appear to have a sample taken shall be given to the sheriff. If a person not sentenced to a term of confinement fails to appear immediately following sentencing or at the date, time, and location designated in the court order, the sheriff shall inform the court of the failure to appear and the court may issue an order to show cause pursuant to G.S. 5A-15 and may issue an order for arrest pursuant to G.S. 5A-16. The defendant shall continue to be subject to the court's order to provide a DNA sample until such time as his or her DNA sample is analyzed and a record is successfully entered into the State DNA Database.

(b) If, for any reason, the defendant provides a DNA blood sample instead of a cheek swab, ~~Only~~ only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory technician, phlebotomist, or other health care worker with phlebotomy training shall draw ~~any~~ the DNA blood sample to be submitted for analysis. No civil liability shall attach to any person authorized to draw blood by this section as a result of drawing blood from any person if the blood was drawn according to recognized medical procedures. No person shall be relieved from liability for negligence in ~~the drawing of any~~ obtaining a DNA ~~sample.~~sample by any method.

(c) The SBI shall provide ~~to the sheriff the materials and supplies~~the materials, supplies, and postage pre-paid envelopes necessary to ~~draw~~ obtain a DNA sample from a person ~~not sentenced to a term of confinement.~~required to provide a DNA sample pursuant to

this Article and to forward the DNA sample to the appropriate laboratory for DNA analysis and testing. Any DNA sample ~~drawn from a person not sentenced to a term of confinement~~obtained pursuant to this Article, other than a DNA sample obtained from a person who is incarcerated, shall be taken using the materials and supplies provided by the SBI.

(d) Duly authorized law enforcement and corrections personnel may employ reasonable force in cases where an individual refuses to provide a DNA sample required under this Article, and no such employee shall be civilly or criminally liable for the use of such reasonable force.

(e) Any person who is subject to the requirements of this Article, and who, after receiving notification of the requirement to provide a DNA sample, knowingly refuses to provide such DNA sample, shall be guilty of a Class A1 misdemeanor."

SECTION 8. G.S. 15A-266.7 reads as rewritten:

"**§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood~~ DNA sample.**

~~The SBI shall adopt rules governing the procedures to be used in the submission, identification, analysis, and storage of DNA samples and typing results of DNA samples submitted under this Article. The DNA sample shall be securely stored in the State Databank. The typing results shall be securely stored in the State Database. These procedures shall also include quality assurance guidelines to insure that DNA identification records meet standards and audit standards for laboratories which submit DNA records to the State Database. Records of testing shall be retained on file at the SBI.~~

(a) The SBI shall:

(1) Adopt procedures to be used in the collection, security, submission, identification, analysis, and storage of DNA samples and typing results of DNA samples submitted under this Article. These procedures shall also include quality assurance guidelines to insure that DNA identification records meet audit standards for laboratories which submit DNA records to the State DNA Database.

(2) Adopt Quality Assurance Guidelines for DNA Testing Laboratories and DNA Databasing Laboratories that meet or exceed the quality assurance guidelines established for such laboratories by the CODIS unit of the Federal Bureau of Investigation.

(b) DNA samples shall be securely stored in the State DNA Databank. The typing results shall be securely stored in the State DNA Database.

(c) Records of testing shall be retained on file at the SBI."

SECTION 9. G.S. 15A-266.8 reads as rewritten:

"**§ 15A-266.8. DNA database exchange.**

(a) It shall be the duty of the SBI to receive DNA samples, to store, to analyze or to contract out the DNA typing analysis to a qualified DNA laboratory that meets the guidelines as established by the SBI, classify, and file the DNA record of identification characteristic profiles of DNA samples submitted pursuant to ~~G.S. 15A-266.7~~ this Article and to make such information available as provided in this section. The SBI may contract out DNA typing analysis to a qualified DNA laboratory that meets guidelines as established by the SBI. The results of the DNA profile of individuals in the State Database shall be made available to local, State, or federal law enforcement agencies, approved crime laboratories which serve these agencies, or the district attorney's office upon written or electronic request and in furtherance of an official investigation of a criminal offense. These records shall also be available upon receipt of a valid court order directing the SBI to release these results to appropriate parties not listed above, when the court order is signed by a superior court judge after a hearing. The SBI shall maintain a file of such court orders.

(b) The SBI shall adopt rules governing the methods of obtaining information from the State Database and CODIS and procedures for verification of the identity and authority of the requester.

(c) The SBI shall create a separate population database comprised of ~~blood~~ DNA samples obtained under this Article, after all personal identification is removed. Nothing shall prohibit the SBI from sharing or disseminating population databases with other law enforcement agencies, crime laboratories that serve them, or other third parties the SBI deems necessary to assist the SBI with statistical analysis of the SBI's population databases. The population database may be made available to and searched by other agencies participating in the CODIS system."

SECTION 10. G.S. 15A-266.11 reads as rewritten:

"**§ 15A-266.11. Unauthorized uses of DNA Databank; penalties.**

(a) Any person ~~who, by virtue of employment, or official position,~~who has possession of, or access to, individually identifiable DNA information contained in the State DNA Database or Databank and who willfully discloses it in any manner to any person or agency not entitled to receive it is guilty of a ~~Class 1 misdemeanor in accordance with G.S. 14-3.~~Class H felony.

(b) Any person who, without authorization, willfully obtains individually identifiable DNA information from the State DNA Database or Databank is guilty of a ~~Class 1 misdemeanor in accordance with G.S. 14-3.~~Class H felony."

SECTION 11. G.S. 15A-266.12 reads as rewritten:

"**§ 15A-266.12. Confidentiality of records.**

(a) All DNA profiles and samples submitted to the SBI pursuant to this Article shall be treated as confidential and shall not be disclosed to or shared with any person or agency except as provided in G.S. 15A-266.8.

(b) Only DNA records and samples that directly relate to the identification of individuals shall be collected and stored. These records and samples shall solely be used as a part of the criminal justice system for the purpose of facilitating the personal identification of the perpetrator of a criminal offense; provided that in appropriate circumstances such records may be used to identify potential victims of mass disasters or missing persons.

(c) DNA records and DNA samples submitted to the SBI pursuant to this Article are not a public record as defined by G.S. 132-1.

(d) In the case of a criminal proceeding, requests to access a person's DNA record shall be in accordance with the rules for criminal discovery as defined in G.S. 15A-902. The SBI shall not be required to provide the State DNA Database for criminal discovery purposes.

(e) DNA records and DNA samples submitted to the SBI may only be released for the following authorized purposes:

(1) For law enforcement identification purposes, including the identification of human remains, to federal, State, or local criminal justice agencies.

(2) For criminal defense and appeal purposes, to a defendant who shall have access to samples and analyses performed in connection with the case in which such defendant is charged or was convicted.

(3) If personally identifiable information is removed to local, State, or federal law enforcement agencies for forensic validation studies, forensic protocol development or quality control purposes, and for establishment or maintenance of a population statistics database.

(f) In order to maintain the computer system security of the SBI DNA database program, the computer software and database structures used by the SBI to implement this Article are confidential."

SECTION 12. Article 23 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-502A. DNA sample upon arrest.**

A DNA sample shall be obtained from any person arrested for an offense designated under G.S. 15A-266.3A, in accordance with the provisions contained in Article 13 of Chapter 15A of the General Statutes."

SECTION 13. G.S. 7B-2201 reads as rewritten:

"**§ 7B-2201. Fingerprinting and DNA sample from juvenile transferred to superior court.**

(a) When jurisdiction over a juvenile is transferred to the superior court, the juvenile shall be fingerprinted and the juvenile's fingerprints shall be sent to the State Bureau of Investigation.

(b) When jurisdiction over a juvenile is transferred to the superior court, a DNA sample shall be taken from the juvenile if any of the offenses for which the juvenile is transferred are included in the provisions of G.S. 15A-266.3A."

SECTION 14. This act becomes effective January 1, 2011.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-85 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-84

Date _____,2010

Senator McKissick

moves to amend the bill on page 7, lines 8-10
by deleting those lines.

And on page 9, lines 3-4
By inserting between those lines the following:

"**SECTION 12.1.** G.S. 15A-534(a) reads as rewritten:

'(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

(1) Release the defendant on his written promise to appear.

(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.

(3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.

(4) 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.

(5) House arrest with electronic monitoring.

If condition (5) is imposed, the defendant must execute a secured appearance bond under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.'"

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-85 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

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AMENDMENT
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SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

AGENDA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

SENATOR MARTIN L. NESBITT, CHAIRMAN
Senator Pete Brunstetter, Vice Chairman
Senator Dan Clodfelter, Vice Chairman
Senator R. C. Soles, Vice Chairman
Senator Josh Stein, Vice Chairman

Wednesday, July 7, 2010
Immediately After Evening Session
Room 1027

1. Call Meeting to Order.

2. Recognize members, staff, and guests.

The following bills are on the agenda for consideration:

BILL NO.	SHORT TITLE	SPONSOR
HB 748	Electioneering at Early Voting Sites.	Representative Ross Representative Weiss Representative Dollar Representative Stam
SB 1383	Safer Streets/DNA Initiatives.	Senator Clodfelter

Adjournment.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

H D

HOUSE BILL 748
PROPOSED SENATE COMMITTEE SUBSTITUTE H748-CSST-99 [v.4]

6/28/2010 8:28:19 PM

Short Title: Citizens United Response. (Local)

Sponsors:

Referred to:

March 24, 2009

A BILL TO BE ENTITLED

AN ACT TO DEFINE COORDINATION AND COORDINATED EXPENDITURE; TO REQUIRE REPORTING OF AND DISCLOSURES ON INDEPENDENT EXPENDITURES FOR POLITICAL ADVERTISEMENTS THAT IS THE SAME AS THAT OF POLITICAL COMMITTEES; TO REPEAL ARTICLES 22E, 22F, 22G AND 22H OF CHAPTER 163 OF THE GENERAL STATUTES; AND TO CLARIFY THE EXEMPTION OF POLITICAL EXPENDITURES TO THE DEFINITION OF "GIFT" UNDER THE STATE GOVERNMENT ETHICS ACT AND THE MISCELLANEOUS REPORTING UNDER CHAPTER 120C.

The General Assembly Of North Carolina enacts:

SECTION 1. G.S. 163-278.6 reads as rewritten:

"**§ 163-278.6. Definitions.**

When used in this Article:

(1) The term "board" means the State Board of Elections with respect to all candidates for State, legislative, and judicial offices and the county or municipal board of elections with respect to all candidates for county and municipal offices. The term means the State Board of Elections with respect to all statewide referenda and the county or municipal board of elections conducting all local referenda.

(2) The term "broadcasting station" means any commercial radio or television station or community antenna radio or television station. Special definitions of "radio" and "television" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(3) The term "business entity" means any partnership, joint venture, joint-stock company, company, firm, or any commercial or industrial establishment or enterprise.

(4) The term "candidate" means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has taken positive action for the purpose of bringing about that individual's nomination or election to public office. Examples of positive action include:

a. Filing a notice of candidacy or a petition requesting to be a candidate,

b. Being certified as a nominee of a political party for a vacancy,

c. Otherwise qualifying as a candidate in a manner authorized by law,

d. Making a public announcement of a definite intent to run for public office in a particular election, or

e. Receiving funds or making payments or giving the consent for anyone else to receive funds or transfer anything of value for the purpose of bringing about that individual's nomination or election to office. Transferring anything of value includes incurring an obligation to transfer anything of value.

Status as a candidate for the purpose of this Article continues if the individual is receiving contributions to repay loans or cover a deficit or is making expenditures to satisfy obligations from an election already held. Special definitions of "candidate" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(5) The term "communications media" or "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, newspaper inserts, and any person or individual whose business is polling public opinion, analyzing or predicting voter behavior or voter preferences. Special definitions of "print media," "radio," and "television" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(5h) The term "coordination" means in concert or cooperation with, or at the request or suggestion of.

(5g) The term "coordinated expenditure" means an expenditure that is made in concert or cooperation with, or at the request or suggestion of, a candidate, a candidate campaign committee as defined in G.S. 163-278.38Z(3), the agent of the candidate, or the agent of the candidate campaign committee. An expenditure for the distribution of information relating to a candidate's campaign, positions, or policies, that is obtained through publicly available resources, including a candidate campaign committee, is not a coordinated expenditure if it is not made in concert or cooperation with, or at the request or suggestion of, a candidate, the candidate campaign committee, the agent of the candidate, or the agent of the candidate campaign committee.

(6) The terms "contribute" or "contribution" mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, made to, or in coordination with, a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year, and any contract, agreement, or other obligation to make a contribution. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a contribution from that person or entity. These terms include, without limitation, such contributions as labor or personal services, postage, publication of campaign literature or materials, in-kind transfers, loans or use of any supplies, office machinery, vehicles, aircraft, office space, or similar or related services, goods, or personal or real property. These terms also include, without limitation, the proceeds of sale of services, campaign literature and materials, wearing apparel, tickets or admission prices to campaign events such as rallies or dinners, and the proceeds of sale of any campaign-related services or goods. Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, political committee, or

referendum committee. The term "contribution" does not include an "independent expenditure." If:

a. Any individual, person, committee, association, or any other organization or group of individuals, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any disbursement for any electioneering communication, as defined in ~~G.S. 163-278.80(2) and (3) and G.S. 163-278.90(2) and (3);~~ this section; and

b. That disbursement is coordinated with a candidate, an authorized political committee of that candidate, a State or local political party or committee of that party, or an agent or official of any such candidate, party, or committee

that disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party.

(7) The term "corporation" means any corporation established under either domestic or foreign charter, and includes a corporate subsidiary and any business entity in which a corporation participates or is a stockholder, a partner or a joint venturer. The term applies regardless of whether the corporation does business in the State of North Carolina.

(7a) The term "costs of collection" means monies spent by the State Board of Elections in the collection of the penalties levied under this Article to the extent the costs do not constitute more than fifty percent (50%) of the civil penalty. The costs are presumed to be ten percent (10%) of the civil penalty unless otherwise determined by the State Board of Elections based on the records of expenses incurred by the State Board of Elections for its collection procedures.

(7b) The term "day" means calendar day.

(7c) The term "election cycle" means the period of time from January 1 after an election for an office through December 31 after the election for the next term of the same office. Where the term is applied in the context of several offices with different terms, "election cycle" means the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year.

(8) The term "election" means any general or special election, a first or second primary, a run-off election, or an election to fill a vacancy. The term "election" shall not include any local or statewide referendum.

(8a) The term "enforcement costs" means salaries, overhead, and other monies spent by the State Board of Elections in the enforcement of the penalties provisions of this Article, including the costs of investigators, attorneys, travel costs for State Board employees and its attorneys, to the extent the costs do not constitute more than fifty percent (50%) of the sum levied for the enforcement costs and civil late penalty.

(8j) The term "electioneering communication" means any broadcast, cable, or satellite communication, or mass mailing, or telephone bank that has all the following characteristics:

a. Refers to a clearly identified candidate for elected office.

b. Is aired or transmitted within 40 days of an election for that office.

c. May be received by either:

1. Seventy five percent (75%) or more of registered voters, cumulative per election, in that election if in the form of broadcast.
2. Fifty percent (50%) of more of the registered voters, cumulative per election, in that election if in the form of cable or satellite.
3. 20,000 or more households, cumulative per election, in a statewide election or 2,500 households, cumulative per election, in any other election if in the form of mass mailing or telephone bank.

(8k) The term "electioneering communication" does not include any of the following:

a. A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless those facilities are owned or controlled by any political party, political committee, or candidate.

b. A communication that constitutes an expenditure or independent expenditure under this Article.

c. A communication that constitutes a candidate debate or forum conducted pursuant to rules adopted by the Board or that solely promotes that debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

d. A communication made while the General Assembly is in session which, incidental to advocacy for or against a specific piece of legislation pending before the General Assembly, urges the audience to communicate with a member or members of the General Assembly concerning that piece of legislation or a solicitation of others as defined in G.S. 120C-100(a)(13) properly reported under Chapter 120C of the General Statutes.

e. A communication that meets all of the following criteria:

1. Does not mention any election, candidacy, political party, opposing candidate, or voting by the general public.
2. Does not take a position on the candidate's character or qualifications and fitness for office.
3. Proposes a commercial transaction.

f. A public opinion poll conducted by a news medium, as defined in G.S. 8-53.11(a)(3), or conducted by an organization whose primary purpose is to conduct or publish public opinion polls.

g. A communication made by a news medium, as defined in G.S. 8-53.11(a)(3), if the communication is in print.

(9) The terms "expend" or "expenditure" mean any purchase, advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, whether or not made in an election year, and any contract, agreement, or other obligation to make an expenditure, to support or oppose the nomination, election, or passage of one or more clearly identified candidates, or ballot measure. An expenditure forgiven by a person or entity to whom it is owed shall be reported as a contribution from that person or entity. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. The term

"expenditure" also includes any payment or other transfer made by a candidate, political committee, or referendum committee.

(9a) The term "independently expend" or "independent expenditure" means an expenditure to support or oppose the nomination or election of one or more clearly identified candidates that is ~~made without consultation or coordination with a candidate or agent of a candidate whose nomination or election the expenditure supports or whose opponent's nomination or election the expenditure opposes.~~ not a coordinated expenditure. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. A contribution is not an independent expenditure. As applied to referenda, the term "independent expenditure" applies if consultation or coordination does not take place with a referendum committee that supports a ballot measure the expenditure supports, or a referendum committee that opposes the ballot measure the expenditure opposes.

(10) The term "individual" means a single individual or more than one individual.

(11) The term "insurance company" means any person whose business is making or underwriting contracts of insurance, and includes mutual insurance companies, stock insurance companies, and fraternal beneficiary associations.

(12) The term "labor union" means any union, organization, combination or association of employees or workmen formed for the purposes of securing by united action favorable wages, improved labor conditions, better hours of labor or work-related benefits, or for handling, processing or righting grievances by employees against their employers, or for representing employees collectively or individually in dealings with their employers. The term includes any unions to which Article 10, Chapter 95 applies.

(12k) The term "mass mailing" means any mailing by United States mail or facsimile to 20,000 or more households, cumulative per election, in a statewide election or 2,500 households, cumulative per election, in any other election.

(13) The term "person" means any business entity, corporation, insurance company, labor union, or professional association.

(14) The term "political committee" means a combination of two or more individuals, such as any person, committee, association, organization, or other entity that makes, or accepts anything of value to make, contributions or expenditures and has one or more of the following characteristics:

a. Is controlled by a candidate;

b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;

c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b); or

d. Has the major purpose to support or oppose the nomination or election of one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

If the entity qualifies as a "political committee" under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a political committee if it receives contributions or makes expenditures or maintains assets or

liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

The term "political committee" includes the campaign of a candidate who serves as his or her own treasurer.

Special definitions of "political action committee" and "candidate campaign committee" that apply only in Part 1A of this Article are set forth in G.S. 163-278.38Z.

(15) The term "political party" means any political party organized or operating in this State, whether or not that party is recognized under the provisions of G.S. 163-96. A special definition of "political party organization" that applies only in Part 1A of this Article is set forth in G.S. 163-278.38Z.

(16) Repealed by Session Laws 1999-31, s. 4.

(17) The term "professional association" means any trade association, group, organization, association, or collection of persons or individuals formed for the purposes of advancing, representing, improving, furthering or preserving the interests of persons or individuals having a common vocation, profession, calling, occupation, employment, or training.

(18) The term "public office" means any office filled by election by the people on a statewide, county, municipal or district basis, and this Article shall be applicable to such elective offices whether the election therefor is partisan or nonpartisan.

(18a) The term "referendum" means any question, issue, or act referred to a vote of the people of the entire State by the General Assembly, a unit of local government, or by the people under any applicable local act and includes constitutional amendments and State bond issues. The term "referendum" includes any type of municipal, county, or special district referendum and any initiative or referendum authorized by a municipal charter or local act. A recall election shall not be considered a referendum within the meaning of this Article.

(18b) The term "referendum committee" means a combination of two or more individuals such as a committee, association, organization, or other entity or a combination of two or more business entities, corporations, insurance companies, labor unions, or professional associations such as a committee, association, organization, or other entity the primary purpose of which is to support or oppose the passage of any referendum on the ballot. If the entity qualifies as a "referendum committee" under this subdivision, it continues to be a referendum committee if it receives contributions or makes expenditures or maintains assets or liabilities. A referendum committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report.

(18k) The term "telephone bank" means telephone calls that are targeted to the relevant electorate, except when those telephone calls are made by volunteer workers, whether or not the design of the telephone bank system, development of calling instructions, or training of volunteers was done by paid professionals.

(19) The term "treasurer" means an individual appointed by a candidate, political committee, or referendum committee as provided in G.S. 163-278.7 or G.S. 163-278.40A."

SECTION 2. G.S. 163-278.12 reads as rewritten:

"**§ 163-278.12. Special reporting of contributions and independent expenditures.**

(a) Subject to G.S. 163-278.39 and G.S. 163-278.14, individuals and other entities not otherwise prohibited from doing so may make independent expenditures. In the event an individual or other entity making independent expenditures but not otherwise required to report them makes independent expenditures in excess of one hundred dollars ($100.00), that individual or entity shall file a statement of such independent expenditure with the appropriate board of elections in the manner prescribed by the State Board of Elections.

(b) Any entity other than an individual that is permitted to make contributions but is not otherwise required to report them shall report each contribution in excess of one hundred dollars ($100.00) with the appropriate board of elections in the manner prescribed by the State Board of Elections.

(c) In assuring compliance with subsections (a) and (b) of this section, the State Board of Elections shall require the identification of each entity making a ~~donation~~ transfer of more than one hundred dollars ($100.00) to the entity filing the report if the ~~donation~~ transfer was made ~~for the purpose of furthering~~to further the reported independent expenditure or contribution.

(d) Contributions or independent expenditures required to be reported under this section shall be reported within 30 days after they exceed one hundred dollars ($100.00) or 10 days before an election the contributions or independent expenditures affect, whichever occurs earlier.

(e) The State Board of Elections shall require subsequent reporting of independent expenditures according to the same schedule required of political committees under G.S. 163-278.9(a). An individual or person that makes an independent expenditure shall disclose by report to the State Board of Elections within 48 hours of incurring an expense of ten thousand dollars ($10,000) or more before an election but after the period covered by the last report due before that election.

(f) For the purposes of subsection (c) of this section, a transfer is deemed to have been made to further an independent expenditure or contribution if any of the following apply to that transfer:

(1) The transferor designates, requests, or suggests that the transfer be used for an independent expenditure or multiple independent expenditures, or for contributions, and the transferee agrees to so use the transfer.

(2) The transferee or an agent of the transferee expressly solicited the transferor for a transfer for making or paying for an independent expenditure or contribution.

(3) The transferor and the transferee engaged in substantial written or oral discussion regarding the transferor making, donating, or paying for an independent expenditure or contribution.

(4) The transferor or the transferee knew or had reason to know of the transferee's intent to make independent expenditures or contributions with the transfer.

(5) The transferor or the transferee made an independent expenditure or contribution during the two-year period that ends on the date on which the transfer was made.

A transfer shall not be deemed to be made to further an independent expenditure or contribution if the transfer was a commercial transaction occurring in the ordinary course of business between the transferor and the transferee unless there is affirmative evidence that the amounts were transferred to further an independent expenditure or contribution. In determining the amount of a transfer that was made to further any particular independent expenditure, there shall be excluded any amount that was designated by the transferor with respect to a different election than the election that is the subject of the independent expenditure covered by the report.

(g) All reports required by this section shall be filed according to rules adopted by the State Board of Elections. If the expense incurred is greater than ten thousand dollars ($10,000.00), the report shall be filed electronically. The State Board of Elections shall provide the software necessary to file the electronic report to any individual or person required to file an electronic report at no cost to that individual or person."

SECTION 3. Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"**§ 163-278.12C. Special reporting of electioneering communications.**

(a) Every individual or person that incurs an expense for the direct costs of producing or airing electioneering communications aggregating in excess of five thousand dollars ($5,000.00) shall file the following reports with the State Board:

(1) The identification of the individual or person incurring the expense, of any individual or person sharing or exercising direction or control over the activities of that individual or person, and of the custodian of the books and accounts of the individual or person incurring the expense.

(2) The principal place of business of the person incurring the expense, if not an individual.

(3) The amount of each expense incurred during the period covered by the statement and the identification of the individual or person to whom the expense was incurred.

(4) The elections to which the electioneering communications pertain, if any, and the names, if known, of the candidates identified or to be identified.

(5) The names and addresses of all entities that transferred, to further an electioneering communication or electioneering communications, funds or anything of value whatsoever in an aggregate amount of more than one thousand dollars ($1,000) during the reporting period. If the transferor is an individual, the statement shall also contain the principal occupation of the transferor. The "principal occupation of the transferor" shall mean the same as the "principal occupation of the contributor" in G.S. 163-278.11.

(b) The initial report shall be filed with the State Board no later than the tenth day following the day the individual or person incurs an expense for the direct costs of producing or airing an electioneering communication. The State Board shall require subsequent reporting according to the same schedule required of political committees under G.S. 163-278.9(a). An individual or person that produces or airs an electioneering communication shall disclose by report to the State Board within 48 hours of incurring an expense of ten thousand dollars ($10,000) or more before an election but after the period covered by the last report due before that election.

(c) For the purposes of subdivision (a)(5) of this section, funds or anything of value is deemed to have been transferred to further an electioneering communication if any of the following apply to that transfer:

(1) The transferor designates, requests, or suggests that the transfer be used for an electioneering communication or electioneering communications and the transferee agrees to so use the transfer.

(2) The transferee or an agent of the transferee expressly solicited the transferor for a transfer for making or paying for an electioneering communication.

(3) The transferor and the transferee engaged in substantial written or oral discussion regarding the transferor making, donating, or paying for an electioneering communication.

(4) The transferor or the transferee knew or had reason to know of the transferee's intent to make electioneering communications with the transfer.

(5) The transferor or the transferee made electioneering communication during the two-year period that ends on the date on which the transfer was made.

Transferring funds or anything of value shall not be deemed to be made to further an electioneering communication if the transfer was a commercial transaction occurring in the ordinary course of business between the transferor and the recipient unless there is affirmative evidence that the funds or things of value were provided to further an electioneering communication. In determining the amount of a transfer that was made to further any particular electioneering communication, there shall be excluded any amount that was designated by the transferor with respect to a different election than the election that is the subject of the electioneering communication covered by the report.

(d) All reports required by this section shall be filed according to rules adopted by the State Board. If the expense incurred is greater than ten thousand dollars ($10,000.00), the report shall be filed electronically. The State Board shall provide the software necessary to file the electronic report to any individual or person required to file an electronic report at no cost to that individual or person."

SECTION 4. G.S. 163-278.17 reads as rewritten:

"**§ 163-278.17. Statements of media outlets ~~receiving campaign expenditures.~~regarding political advertising.**

(a) Repealed by Session Laws 1985, c. 183, s. 1.

(b) Each media outlet shall require written authority for each expenditure from each candidate, treasurer or individual making or authorizing an expenditure. A candidate may authorize advertisement paid for by a treasurer appointed by the candidate. All written authorizations of expenditures signed by a candidate, treasurer or individual shall be deemed public records and copies of ~~said~~ those written authorizations shall be available for inspection during normal business hours at the office(s) of the media outlet making the publication or broadcast nearest to the place(s) of publication or broadcast.

(c) Repealed by Session Laws 1985, c. 183, s. 2.

(d) Each media outlet shall require written authority for each independent expenditure or electioneering communication from each individual or person making or authorizing an independent expenditure or electioneering communication. All written authorizations of independent expenditures or electioneering communications shall be deemed public records and copies of those written authorizations shall be available for inspection during normal business hours at the office(s) of the media outlet making the publication or broadcast nearest to the place(s) of publication or broadcast. The written authorization shall include all of the following:

(1) The name and address of the individual or person making or authorizing the independent expenditure or electioneering communication.

(2) The name and address of the registered agent, if the person is doing business in North Carolina.

(3) The information required by G.S. 163-278.39(a).

(e) All written authorizations under this section involving an expenditure, independent expenditure, or electioneering communication with a value greater than ten thousand dollars ($10,000.00) in a statewide, legislative, or judicial race shall be electronically communicated to the State Board and shall be made publicly available by the State Board.

SECTION 5. G.S. 163-278.19 reads as rewritten:

"**§ 163-278.19. Violations by corporations, business entities, labor unions, professional associations and insurance companies.**

(a) Except as provided in subsections (a2), (b), (d), (e), (f), and (g) of this section it shall be unlawful for any corporation, business entity, labor union, professional association or insurance company directly or ~~indirectly:~~indirectly do any of the following:

(1) To make any contribution to a candidate or political ~~committee or to make any expenditure to support or oppose the nomination or election of a clearly identified candidate;~~committee.

(2) To pay or use or offer, consent or agree to pay or use any of its money or property for any contribution to a candidate or political ~~committee or for any expenditure to support or oppose the nomination or election of a clearly identified candidate; or~~committee.

(3) To compensate, reimburse, or indemnify any person or individual for money or property so used or for any contribution or expenditure so ~~made;~~made.

~~and it~~It shall also be unlawful for any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company to aid, abet, advise or consent to any such ~~contribution or expenditure,~~contribution, or for any person or individual to solicit or knowingly receive any such ~~contribution or expenditure.~~ contribution. Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party. Any officer, director, stockholder, attorney, agent or member of any corporation, business entity, labor union, professional association or insurance company aiding or abetting in any contribution ~~or expenditure~~ made in violation of this section shall be guilty of a Class 2 misdemeanor, and shall in addition be liable to such corporation, business entity, labor union, professional association or insurance company for the amount of such contribution ~~or expenditure,~~ and the same may be recovered of him upon suit by any stockholder or member thereof.

(a1) A transfer of funds shall be deemed to have been a contribution ~~or expenditure~~ made indirectly if it is made to any committee or political party account, whether inside or outside this State, with the intent or purpose of being exchanged in whole or in part for any other funds to be contributed or expended in an election for North Carolina office or to offset any other funds contributed or expended in an election for North Carolina office.

(a2) Proceeds of loans made in the ordinary course of business by financial institutions may be used for contributions made in compliance with this Chapter. Financial institutions may also grant revolving credit to political committees and referendum committees in the ordinary course of business.

(b) It shall, however, be lawful for any corporation, business entity, labor union, professional association or insurance company to communicate with its employees, stockholders or members and their families on any subject; to conduct nonpartisan registration and get-out-the-vote campaigns aimed at their employees, stockholders, or members and their families; or for officials and employees of any corporation, insurance company or business entity or the officials and members of any labor union or professional association to establish, administer, contribute to, and to receive and solicit contributions to a separate segregated fund to be utilized for political purposes, and those individuals shall be deemed to become and be a political committee as that term is defined in G.S. 163-278.6(14) or a referendum committee as defined in G.S. 163-278.6(18b); provided, however, that it shall be unlawful for any such fund to make a contribution or expenditure by utilizing contributions secured by physical force, job discrimination, financial reprisals or the threat of force, job discrimination or financial reprisals, or by dues, fees, or other moneys required as a condition of membership or employment or as a requirement with respect to any terms or conditions of employment, including, without limitation, hiring, firing, transferring, promoting, demoting, or granting seniority or employment-related benefits of any kind, or by moneys obtained in any commercial transaction whatsoever.

(c) A violation of this section is a Class 2 misdemeanor. In addition, the acceptance of any contribution, ~~expenditure, payment,~~ reimbursement, ~~indemnification, or anything of value~~ or indemnification under subsection (a) shall be a Class 2 misdemeanor.

(d) Whenever a candidate or treasurer is an officer, director, stockholder, attorney, agent, or employee of any corporation, business entity, labor union, professional association or insurance company, and by virtue of his position therewith uses office space and communication facilities of the corporation, business entity, labor union, professional association or insurance company in the normal and usual scope of his employment, the fact that the candidate or treasurer receives telephone calls, mail, or visits in such office which relates to activities prohibited by this Article shall not be considered a violation under this section.

(e) Notwithstanding the prohibitions specified in this Article and Article 22 of this Chapter, a political committee organized under provisions of this Article shall be entitled to receive and the corporation, business entity, labor union, professional association, or insurance company designated on the committee's organizational report as the parent entity of the employees or members who organized the committee is authorized to give reasonable administrative support that shall include record keeping, computer services, billings, mailings to members of the committee, membership development, fund-raising activities, office supplies, office space, and such other support as is reasonably necessary for the administration of the committee.

The approximate cost of any reasonable administrative support shall be submitted to the committee, in writing, and the committee shall include that cost on the report required by G.S. 163-278.9(a)(6). Also included in the report shall be the approximate allocable portion of the compensation of any officer or employee of the corporation, business entity, labor union, professional association, or insurance company who has devoted more than thirty-five percent (35%) of his time during normal business hours of the corporation, business entity, labor union, professional association, or insurance company during the period covered by the required report. The approximate cost submitted by the parent corporation, business entity, labor union, professional association, or insurance company shall be entered on the committee's report as the final entry on its list of "contributions" and a copy of the written approximate cost received by it shall be attached.

The reasonable administrative support given by a corporation, business entity, labor union, professional association, or insurance company shall be designated on the books of the corporation, business entity, labor union, professional association, or insurance company as such and may not be treated by it as a business deduction for State income tax purposes.

(f) This section does not prohibit a contribution ~~or independent expenditure~~ by an entity that:

(1) Has as an express purpose promoting social, educational, or political ideas and not to generate business income;

(2) Does not have shareholders or other persons which have an economic interest in its assets and earnings; and

(3) Was not established by a business corporation, by an insurance company, by a business entity, including, but not limited to, those chartered under Chapter 55, Chapter 55A, Chapter 55B, or Chapter 58 of the General Statutes, by a professional association, or by a labor union and does not receive substantial revenue from such entities. Substantial revenue is rebuttably presumed to be more than ten percent (10%) of total revenues in a calendar year.

(g) If a political committee has as its only purpose accepting contributions and making expenditures to influence elections, and that political committee incorporates as a nonprofit corporation to shield its participants from liability created outside this Chapter, that political committee is not considered to be a corporation for purposes of this section. Incorporation of a political committee does not relieve any individual, person, or other entity of any liability, duty, or obligation created pursuant to any provision of this Chapter. To obtain the benefits of this subsection, an incorporating political committee must state exactly the following language as

the only purpose for which the corporation can be organized: "to accept contributions and make expenditures to influence elections as a political committee pursuant to G.S. 163-278.6(14) only." No political committee shall do business as a political committee after incorporation unless it has been certified by the State Board of Elections as being in compliance with this subsection."

SECTION 6. G.S. 163-278.22 is amended by adding a new subdivision to read:

"(15) To establish a process for determination as to whether communication is an expenditure, independent expenditure, or electioneering communication prior to the airing or distribution of that communication when so requested by an individual or person producing a communication. The responsibility for the determination may be delegated to the Executive Director. If the responsibility is delegated to the Executive Director, the process established by the State Board shall require a written determination by the Executive Director to include stated findings and an opportunity for immediate appeal to the State Board of the determination by the Executive Director."

SECTION 7. G.S. 163-278.38Z(7) reads as rewritten:

"(7) "Print media" means billboards, cards, newspapers, newspaper inserts, magazines, mass mailings, pamphlets, fliers, periodicals, and outdoor advertising facilities. ~~A "mass mailing" is a mailing with more than 500 pieces.~~"

SECTION 8. G.S. 163-278.39 reads as rewritten:

"**§ 163-278.39. Basic disclosure requirements for all political ~~campaign~~ advertisements.**

(a) Basic Requirements. – It shall be unlawful for any sponsor to sponsor an advertisement in the print media or on radio or television that constitutes an ~~expenditure~~ expenditure, independent expenditure, electioneering communication, or contribution required to be disclosed under this Article unless all the following conditions are met:

(1) It bears the legend or includes the statement: "Paid for by _____ [Name of candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor]." In television advertisements, this disclosure shall be made by visual legend.

(2) The name used in the labeling required in subdivision (1) of this subsection is the name that appears on the statement of organization as required in ~~G.S. 163-278.7(b)(1).~~G.S.163-278.7(b)(1) or G.S. 163-278.12C(a).

(3) Repealed by Session Laws 2001-353, s. 5, effective August 10, 2001.

(4) The sponsor states in the advertisement its position for or against a ballot measure, provided that this subdivision applies only if the advertisement is made for or against a ballot measure.

(5) In a print media advertisement supporting or opposing the nomination or election of one or more clearly identified candidates, the sponsor states whether it is authorized by a candidate. The visual legend in the advertisement shall state either "Authorized by [name of candidate], candidate for [name of office]" or "Not authorized by a candidate." This subdivision does not apply if the sponsor of the advertisement is the candidate the advertisement supports or that candidate's campaign committee.

(6) In a print media advertisement that identifies a candidate the sponsor is opposing, the sponsor discloses in the advertisement the name of the candidate who is intended to benefit from the advertisement. This subdivision applies only when the sponsor coordinates or consults about the

advertisement or the expenditure for it with the candidate who is intended to benefit.

(7) In a print media advertisement supporting or opposing the nomination or election of one or more clearly identified candidates that is an independent expenditure, the sponsor discloses the names of the individuals or persons making the five largest transfers to the sponsor within the six month period prior to the purchase of the advertisement if those transfers are required to be reported under G.S. 163-278.12.

(8) In a print media advertisement that is an electioneering communication, the sponsor discloses the names of the individuals or person making the five largest transfers to the sponsor within the six month period prior to the purchase of the advertisement if those transfers are required to be reported under G.S. 163-278.12C.

If an advertisement described in this section is jointly sponsored, the disclosure statement shall name all the sponsors.

(b) Size Requirements. – In a print media advertisement covered by subsection (a) of this section, the height of all disclosure statements required by that subsection shall constitute at least five percent (5%) of the height of the printed space of the advertisement, provided that the type shall in no event be less than 12 points in size. In an advertisement in a newspaper or a newspaper insert, the total height of the disclosure statement need not constitute five percent of the printed space of the advertisement if the type of the disclosure statement is at least 28 points in size. If a single advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face. In a television advertisement covered by subsection (a) of this section, the visual disclosure legend shall constitute 32 scan lines in size. In a radio advertisement covered by subsection (a) of this section, the disclosure statement shall last at least two seconds, provided the statement is spoken so that its contents may be easily understood.

(c) Misrepresentation of Authorization. – Notwithstanding G.S. 163-278.27(a), any candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor making an advertisement in the print media or on radio or television bearing any legend required by subsection (a) of this section that misrepresents the sponsorship or authorization of the advertisement is guilty of a Class 1 misdemeanor."

SECTION 9. G.S. 163-278.39A reads as rewritten:

"**§ 163-278.39A. Disclosure requirements for television and radio advertisements supporting or opposing the nomination or election of one or more clearly identified candidates.**

(a) Expanded Disclosure Requirements. – Any political campaign advertisement on radio or television shall comply with the expanded disclosure requirements set forth in this section. To the extent that it provides the same information required by G.S. 163-278.39, a statement made pursuant to this section satisfies the requirements of G.S. 163-278.39 for the same advertisement.

(b) Disclosure Requirements for Television. –

(1) Candidate advertisements on television. – Television advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate and containing at least the following words: "I am (or "This is____") [name of candidate], candidate for [name of office], and I (or "my campaign____") sponsored this ad." This subdivision applies only to an advertisement that mentions the name of, shows the picture of, transmits the voice of, or

otherwise refers to an opposing candidate for the same office as the sponsoring candidate.

(2) Political party advertisements on television. – Television advertisements purchased by a political party organization supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: "The [name of political party organization] sponsored this ad opposing/supporting [name of candidate] for [name of office]." The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

(3) Political action committee advertisements on television. – Television advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: "The [name of political action committee] political action committee sponsored this ad opposing/supporting [name of candidate] for [name of office]." The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1).

(4) Advertisements on television by an individual. – Television advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and I sponsored this advertisement opposing/supporting [name of candidate] for [name of office]."

(5) Advertisements on television by another sponsor. – Television advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual which supports or opposes the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] sponsored this ad. If the sponsor is a corporation that has the purpose of promoting social, educational, or political ideas, the advertisement shall also include a legible listing on the screen of the individuals or persons making the five largest transfers to the sponsor within the six month period prior to the purchase of the advertisement if those transfers are required to be reported under G.S. 163-278.12."

(6) All advertisements on television. – In any television advertisement described in subdivisions (1) through (4) of this subsection, an unobscured, full-screen picture containing the disclosing individual, either in photographic form or through the actual appearance of the disclosing individual on camera, shall be featured throughout the duration of the disclosure statement.

(7) Electioneering communications on television. – Television advertisements purchased by an individual that are electioneering communications shall include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and I sponsored this advertisement opposing/supporting [name of candidate] for [name of

office]." Television advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual that are electioneering communications shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] sponsored this ad. If the sponsor is a corporation that has the purpose of promoting social, educational, or political ideas, the advertisement shall also include a legible listing on the screen of the individuals or persons making the five largest transfers to the sponsor within the six month period prior to the purchase of the advertisement if those transfers are required to be reported under G.S. 163-278.12C.

(c) Disclosure Requirements for Radio. –

(1) Candidate advertisements on radio. – Radio advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate and containing at least the following words: "I am (or "This is____") [name of candidate], candidate for [name of office], and this ad was paid for (or "sponsored" or "furnished") by [name of candidate campaign committee that paid for the advertisement]." This subdivision applies only to an advertisement that mentions the name of, transmits the voice of, or otherwise refers to an opposing candidate for the same office as the sponsoring candidate.

(2) Political party advertisements on radio. – Radio advertisements purchased by a political party organization supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: "This ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by [name of political party]." The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

(3) Political action committee advertisements on radio. – Radio advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: "This ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by [name of political action committee] political action committee." The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required by G.S. 163-278.7(b)(1).

(4) Advertisements on radio by an individual. – Radio advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and this ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by me."

(5) Advertisements on radio by another sponsor. – Radio advertisements purchased by a sponsor other than a candidate, a candidate campaign

committee, a political party organization, a political action committee, or an individual which supports or opposes the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] paid for (or "sponsored" or "furnished") this ad. If the sponsor is a corporation that has the purpose of promoting social, educational, or political ideas, the advertisement shall also include an aural disclosure of the individuals or persons making the two largest transfers to the sponsor within the period of six months prior to the purchase of the advertisement if those transfers are required to be reported under G.S. 163-278.12.

(6) Electioneering communication on the radio. – Radio advertisements purchased by an individual that are electioneering communications shall include a disclosure statement spoken by the individual and containing at least the following words: "I am [individual's name], and this ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by me." Radio advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual that are electioneering communications shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: "[Name of sponsor] paid for (or "sponsored" or "furnished") this ad. If the sponsor is a corporation that has the purpose of promoting social, educational, or political ideas, the advertisement shall also include an aural disclosure of the individuals or persons making the two largest transfers or provisions to the sponsor within the period of six months prior to the purchase of the advertisement if those transfers are required to be reported under G.S. 163-278.12C.

(d) Placement of Disclosure Statement in Television and Radio Advertisements. – In advertisements on television, a sponsor may place the disclosure statement required by this section at any point during the advertisement, except if the duration of the advertisement is more than five minutes, the disclosure statement shall be made both at the beginning and end of the advertisement. The sponsor may provide the oral disclosure statement required by this section at the same time as the visual disclosure required under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, is shown. But any visual disclosure legend shall be at least 32 scan lines in size. For advertisements on radio, the placement of the oral disclosure statement shall comply with the requirements of the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

(e) Choice of Supporting or Opposing a Candidate. – In its oral disclosure statement, a sponsoring political party organization, political action committee, individual, or other noncandidate sponsor shall choose either to identify an advertisement as supporting or opposing the nomination or election of one or more clearly identified candidates.

(e1) Joint Sponsors. – If an advertisement described in this section is jointly sponsored, the disclosure statement shall name all the sponsors and the disclosing individual shall be one of those sponsors. If a candidate is one of the sponsors, that candidate shall be the disclosing individual, and if more than one candidate is the sponsor, at least one of the candidates shall be the disclosing individual.

(f) Legal Remedy. – Pursuant to the conditions established in subdivisions (1), (2), and (3) of this subsection, a candidate for an elective office who complied with the television and radio disclosure requirements throughout that candidate's entire campaign shall have a monetary remedy in a civil action against (i) an opposing candidate or candidate committee

whose television or radio advertisement violates these disclosure requirements and (ii) against any political party organization, political action committee, individual, or other sponsor whose advertisement for that elective office violates these disclosure requirements:

(1) Any plaintiff candidate in a statewide race in an action under this section shall complete and file a Notice of Complaint Regarding Failure to Disclose on Television or Radio Campaign Advertising with the State Board of Elections after the airing of the advertisement but no later than the first Friday after the Tuesday on which the election occurred. Candidates in nonstatewide races may file the notice during the same time period with one county board of elections within the electoral area in which they are candidates. The timely filing of this notice preserves the candidate's right to bring an action in superior court any time within 90 days after the election. A candidate shall bring the civil action in the county where the candidate filed the notice.

(2) Upon receiving a favorable verdict in accordance with existing law, the plaintiff candidate shall receive a monetary award of actual damages. The price of actual damages shall be calculated as the total dollar amount of television and radio advertising time that was aired and that the plaintiff candidate correctly identifies as being in violation of the disclosure requirements of this section.

The plaintiff candidate shall also receive an award that trebles the amount of actual damages if:

a. The plaintiff candidate can establish having notified or attempted to notify the sponsor of the advertisement properly by return-receipt mail about the failure of a particular advertisement or advertisements to comply with the disclosure requirements of this section, and

b. After the notice or attempted notice, the advertisement continued to be aired.

The treble damages shall be calculated from the date on which the return-receipt notice was accepted or rejected by a defendant sponsoring candidate or candidate committee, political party organization, political action committee, or individual. The plaintiff candidate or candidate committee shall send a copy of any return-receipt mailing to the relevant board of elections as provided in subdivision (1) of this subsection within five days after the notice is returned to the possession of the candidate or candidate committee.

The plaintiff candidate may bring the civil action personally or authorize his or her candidate campaign committee to bring the civil action.

(3) A candidate who violates the disclosure requirements of State law in this section and that candidate's campaign committee shall be jointly and severally liable for the payment of damages and attorneys' fees. If the candidate is held personally liable for any payment of damages or attorneys' fees, the candidate shall not use or be reimbursed by funds from the candidate's campaign committee in paying any amount.

(g) Relation to the Communications Act of 1934. – Television advertisements by a sponsor supporting or opposing the nomination or election of one or more clearly identified candidates shall comply with the oral disclosure requirements under State law in this section. Those advertisements shall also comply with disclosure requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317 by use of visual legends. The content of those visual legends is specified by the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, and G.S. 163-278.39(a)(1). The size of those visual legends is determined by

G.S. 163-278.39(b), which satisfies requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317. In the case of radio advertisements, the oral disclosure requirements under State law in this section incorporate the content requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

(h) No Additional Liability of Television or Radio Outlets. – Television or radio outlets shall not be liable under this Part for carriage of political advertisements that fail to include the disclosure requirements provided for in this Part.

(i) No Criminal Liability. – Nothing in this section regarding the disclosure requirements in subsections (b) and (c) of this section shall be relied upon or otherwise interpreted to create criminal liability."

SECTION 10. Article 22E of Chapter 163 of the General Statutes is repealed.

SECTION 11. Article 22F of Chapter 163 of the General Statutes is repealed.

SECTION 12. Article 22G of Chapter 163 of the General Statutes is repealed.

SECTION 13. Article 22H of Chapter 163 of the General Statutes is repealed.

SECTION 14. G.S. 163-278.62(5a) reads as rewritten:

"(5a) Electioneering communication. – As defined in ~~G.S. 163-278.80 and G.S. 163-278.90,~~ G.S. 163-278.6, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day."

SECTION 15. G.S. 163-278.96(6a) reads as rewritten:

"(6a) Electioneering communication. – As defined in ~~G.S. 163-278.80 and G.S. 163-278.90,~~G.S. 163-278.6, except that it is made during the period beginning 30 days before absentee ballots become available for a primary and ending on primary election day and during the period 60 days before absentee ballots become available for a general election and ending on general election day."

SECTION 16. G.S. 138A-3(15) reads as rewritten:

"(15) Gift. – Anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, liaison personnel, or a person described under G.S. 138A-32(d)(1), (2), or (3). The following shall not be considered gifts under this subdivision:

a. Anything for which fair market value, or face value if shown, is paid by the covered person or legislative employee.

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

c. Contractual arrangements or commercial relationships or arrangements made in the normal course of business if not made for the purpose of lobbying.

d. Academic or athletic scholarships based on the same criteria as applied to the public.

e. ~~Campaign contributions~~ Anything of value properly ~~received and~~ reported as required under Article 22A of Chapter 163 of the General Statutes.

f. Expressions of condolence related to a death of an individual, sent within a reasonable time of the death, if the expression is one of the following:

1. A sympathy card, letter, or note.

2. Flowers.

3. Food or beverages for immediate consumption.
4. Donations to a religious organization, charity, the State or a political subdivision of the State, not to exceed a total of two hundred dollars ($200.00) per death per donor.

SECTION 17. G.S. 120C-800(e) reads as rewritten:

"(e) This section shall not apply to any of the following:

(1) ~~Lawful campaign contributions~~Anything of value properly ~~received and~~ reported as required under Article 22A of Chapter 163 of the General Statutes.

(2) Any reportable expenditure from a designated individual's extended family member to a designated individual.

(3) Reportable expenditures associated primarily with the designated individual's employment or that designated individual's immediate family member's employment.

(4) Reportable expenditures, other than food, beverages, travel, and lodging, which are received from a person who is a citizen of a country other than the United States or a state other than North Carolina and given during a ceremonial presentation or as a custom.

(5) A thing of value that is paid for by the State.

(6) A scholarship paid for by a nonpartisan state, regional, national, or international legislative organization of which the General Assembly is a member or a legislator or legislative employee is a member or participant of by virtue of that legislator's or legislative employee's public position, or to an affiliated organization of that nonpartisan state, regional, national, or international organization.

SECTION 18. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 19. Sections 1 through 15 of this act becomes effective upon preclearance by the United States Department of Justice. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S D

SENATE BILL 1383
PROPOSED COMMITTEE SUBSTITUTE S1383-CSSA-83 [v.1]

7/7/2010 12:54:56 PM

Short Title: Safer Streets/DNA Initiatives. (Public)

Sponsors:

Referred to:

May 26, 2010

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT A DNA SAMPLE BE TAKEN FROM ANY PERSON ARRESTED FOR COMMITTING CERTAIN OFFENSES, AND TO AMEND THE STATUTES THAT PROVIDE FOR A DNA SAMPLE UPON CONVICTION.

The General Assembly of North Carolina enacts:

SECTION 1. This act shall be known and may be cited as "The DNA Database Act of 2010."

SECTION 2. G.S. 15A-266.2 reads as rewritten:

"**§ 15A-266.2. Definitions.**

As used in this Article, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) "CODIS" means the FBI's national DNA identification index system that allows the storage and exchange of DNA records submitted by federal, State and local forensic DNA laboratories. The term "CODIS" is derived from Combined DNA Index ~~System.~~System (NDIS) administered and operated by the Federal Bureau of Investigation.

(1a) "Custodial Agency" means the governmental entity in possession of evidence collected as part of a criminal investigation or prosecution. ~~This term includes a central evidence storage facility operated by a State agency.~~

(2) "DNA" means deoxyribonucleic acid. DNA is located in the ~~nucleus of~~ cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

(3) "DNA Record" means DNA identification information stored in the State DNA Database or CODIS for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA ~~typing tests.~~ analysis. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification ~~tests~~ analyses on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.

(4) "DNA Sample" ~~in this Article~~ means ~~a~~ blood, ~~buccal,~~ cheek swabs, or any ~~other~~ biological sample containing cells provided by any person with respect to ~~convicted of~~ offenses covered by this Article or submitted to the ~~SBI~~

~~Laboratory~~ State Bureau of Investigation pursuant to this Article for analysis pursuant to a criminal ~~investigation.~~investigation or storage or both.

(5) "FBI" means the Federal Bureau of Investigation.

(5a) "NDIS" means the National DNA Index System that is the national DNA database system of DNA ~~profile~~ records ~~which~~ that meet federal quality assurance and privacy standards.

(6) "SBI" means the State Bureau of Investigation. The SBI is responsible for the ~~policy management~~ policy, management, and administration of the State DNA identification record system to support law ~~enforcement, and for liaison with the FBI regarding the State's participation in CODIS.~~enforcement and other criminal justice agencies.

(7) "State DNA Database" means the SBI's DNA identification record system to support law enforcement. It is administered by the SBI and provides DNA records to the FBI for storage and maintenance in CODIS. The SBI's DNA Database system is the collective capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related ~~to forensic casework, to convicted offenders required to provide a DNA sample under this Article, and to anonymous DNA records used for research or quality control.~~ to: forensic casework; convicted offenders, and arrestees required to provide a DNA sample under this Article; persons required to register as sex offenders under G.S. 14-208.7; unidentified persons or body parts; missing persons; relatives of missing persons; and anonymous DNA profiles used for forensic validation, forensic protocol development, or quality control purposes or establishment of a population statistics database for use by criminal justice agencies.

(8) "State DNA Databank" means the repository of DNA samples collected under the provisions of this Article.

(9) "Criminal Justice Agency" means an agency or institution of a federal, State, or local government, other than the office of the public defender, that performs as part of its principal function, activities relating to the apprehension, investigation, prosecution, adjudication, incarceration, supervision, or rehabilitation of criminal offenders.

(10) "Arrestee" means any person arrested for an offense in G.S. 15A-266.3A(d) or (e).

(11) "Conviction" includes a conviction by a jury or a court, a guilty plea, a plea of nolo contendere, or a finding of not guilty by reason of insanity or mental disease or defect."

SECTION 3. G.S. 15A-266.3 reads as rewritten:

"**§ 15A-266.3. ~~Procedural compatibility with the FBI.~~Establishment of State DNA database and databank.**

~~The DNA identification system as established by the SBI shall be compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory equipment, supplies, and computer software.~~ There is established under the administration of the SBI, the State DNA database and State DNA databank. The SBI shall provide DNA records to the FBI for the searching of DNA records nationwide and storage and maintenance by CODIS. The State DNA databank shall serve as the repository for DNA samples obtained pursuant to this Article. The State DNA database shall be compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory and computer equipment, supplies and computer platform and software. The State DNA database shall have the capability provided by computer software and procedures administered by the SBI to store and maintain DNA records related to all of the following:

(1) Crime scene evidence and forensic casework.
(2) Arrestees, offenders, and persons found not guilty by reason of insanity, who are required to provide a DNA sample under this Article.
(3) Persons required to register as sex offenders under G.S. 14-208.7.
(4) Unidentified persons or body parts.
(5) Missing persons.
(6) Relatives of missing persons.
(7) Anonymous DNA profiles used for forensic validation, forensic protocol development, or quality control purposes or establishment of a population statistics database, for use by criminal justice agencies."

SECTION 4. Article 13 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-266.3A. DNA sample required for DNA analysis upon arrest for certain offenses.**

(a) Unless a DNA sample has previously been obtained by lawful process and the DNA record stored in the State DNA Database, and that record and sample has not been expunged pursuant to any provision of law, a DNA sample for DNA analysis and testing shall be obtained from any person who is arrested for committing an offense described in subsection (d) or (e) of this section.

(b) The arresting law enforcement officer shall obtain, or cause to be obtained, a DNA sample from an arrested person at the time of arrest, or when fingerprinted. However, if the person is arrested without a warrant, then the DNA sample shall not be taken until a probable cause determination has been made pursuant to G.S. 15A-511(c)(1). The DNA sample shall be by cheek swab unless a court order authorizes that a DNA blood sample be obtained. If a DNA blood sample is taken, it shall comply with the requirements of G.S. 15A-266.6(b). The arresting law enforcement officer shall forward, or cause to be forwarded, the DNA sample to the appropriate laboratory for DNA analysis and testing.

(b1) After taking a DNA sample from an arrested person required to provide a DNA sample pursuant to this section, the person taking the DNA sample shall provide the arrested person with a written notice of the procedures for seeking an expunction of the DNA sample pursuant to subsections (f) and (g) of this section. The Department of Justice shall develop, and distribute to all law enforcement agencies in the State, the written notice required by this subsection.

(c) The DNA record of identification characteristics resulting from the DNA testing and the DNA sample itself shall be stored and maintained by the SBI in the State DNA Databank pursuant to this Article.

(d) This section shall apply to a person arrested for violating G.S. 20-106, Receiving or transferring stolen vehicles, or any one of the following offenses in Chapter 14 of the General Statutes:

(1) G.S. 14-17, First and Second Degree Murder.
(2) G.S. 14-18, Manslaughter.
(3) Any offense in Article 7A, Rape and Other Sex Offenses.
(4) Any offense punishable as a felony in Article 8, Assaults; and G.S. 14-32.1, Assault on a Handicapped Person.
(5) Any offense in Article 10, Kidnapping and Abduction, or Article 10A, Human Trafficking.
(6) Any offense in Article 14, Burglary.
(7) Any offense in Article 15, Arson.
(8) Any offense in Article 17, Robbery.
(9) Any offense which would require the person to register under the provisions of Article 27A of Chapter 14 of the General Statutes, Sex Offender and Public Protection Registration Programs.

(10) G.S. 14-277.3A, Stalking.

(e) This section shall also apply to a person arrested for attempting, solicitation of another to commit, conspiracy to commit, or aiding and abetting another to commit, any of the violations included in subsection (d) of this section.

(f) The State Bureau of Investigation shall remove a person's DNA record, and destroy any DNA biological samples that may have been retained, from the State DNA Database and DNA Databank if both of the following are determined pursuant to subsection (g):

(1) As to the charge, or all charges, resulting from the arrest upon which a DNA sample is required under this section, a court or the district attorney has taken action resulting in any one of the following:

a. The charge has been dismissed.

b. The person has been acquitted of the charge.

c. No charge was filed within the statute of limitations, if any.

d. No conviction has occurred, and at least three years has passed since the date of arrest.

(2) The person's DNA record is not required to be in the State DNA Database under some other provision of law, or is not required to be in the State DNA Database based upon an offense from a different transaction or occurrence from the one which was the basis for the person's arrest.

(g) Subject to the requirements of subsection (f) of this section, the defendant or the defendant's counsel shall provide the prosecuting district attorney with a signed request form, promulgated by the Administrative Office of the Courts, requesting that the defendant's DNA record be expunged from the DNA Database and that any biological samples in the DNA Databank be destroyed.

Upon receipt of the request form from the defendant or the defendant's counsel, the district attorney shall (i) determine whether one of the actions in subdivision (1) of subsection (f) of this section has occurred, and if so, (ii) sign the request form or, if the defendant was acquitted or the charges were dismissed by the court, provide the request form for signature by a judge, and (iii) transmit the request form to the SBI no later than 30 days following receipt of the form. If the district attorney determines that none of the actions in subdivision (1) of subsection (f) of this section have occurred, then no later than 30 days following receipt of the request form, the district attorney shall mail to the defendant, at the address specified in the request form, a notice that the DNA record and sample does not qualify for expunction.

Upon receipt of the request form from the district attorney, the SBI shall, within 30 days of receipt of the form, (i) determine whether the requirement of subdivision (2) of subsection (f) of this section has been met, and if so, (ii) remove the person's DNA record and samples as required by subsection (f) of this section. The SBI shall, within 30 days of receipt of the request form, mail to the defendant, at the address specified in the request form, a notice either, (i) documenting expunction of the DNA record and destruction of the DNA sample, or (ii) notifying the defendant that the DNA record and sample do not qualify for expunction pursuant to subsection (f) of this section.

The defendant may file a motion with the court to review the denial of the defendant's request or the failure of either the district attorney or the SBI to act within the prescribed time period.

(h) Any identification, warrant, probable cause to arrest, or arrest based upon a database match of the defendant's DNA sample which occurs after the expiration of the statutory periods prescribed for expunction of the defendant's DNA sample, shall be invalid and inadmissable in the prosecution of the defendant for any criminal offense.

(i) If the defendant is either found guilty of, or pleads guilty or nolo contendere to, a misdemeanor offense that is a lesser-included offense of the charge upon which the DNA sample was based, the DNA record and sample shall be expunged, unless the lesser-included

misdemeanor offense is an offense included in subsection (d) or (e) of this section. A DNA record and sample shall not be expunged under this section if the defendant is either found guilty of, or pleads guilty or nolo contendere to, a felony offense.

(j) Notwithstanding subsection (f) of this section, the SBI is not required to destroy or remove an item of physical evidence obtained from a sample if evidence relating to another person would thereby be destroyed.

(k) The SBI shall adopt procedures to comply with this section."

SECTION 5. G.S. 15A-266.4 reads as rewritten:

"**§ 15A-266.4. ~~Blood sample~~DNA sample required for DNA analysis upon conviction or finding of not guilty by reason of insanity.**

(a) Unless a DNA sample has previously been obtained by lawful process and a record stored in the State DNA ~~database,~~Database, and that ~~sample has~~record and sample have not been expunged pursuant to ~~G.S. 15A-148, on or after December 1, 2003, a person~~any provision of law, a person:

(1) ~~who~~ Who is convicted of any of the crimes listed in subsection (b) of this section or who is found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with ~~G.S. 15A-1321~~G.S. 15A-1321, shall ~~have~~ provide a DNA sample ~~drawn~~ upon intake to jail, prison, or the mental health facility. In addition, every person convicted ~~on or after December 1, 2003,~~ of any of these crimes, but who is not sentenced to a term of confinement, shall provide a DNA sample as a condition of the sentence.

(2) ~~A person who~~Who has been convicted and incarcerated as a result of a conviction of one or more of ~~these crimes prior to December 1, 2003,~~the crimes listed in subsection (b) of this section, or who was found not guilty of any of these crimes by reason of insanity and committed to a mental health facility in accordance with ~~G.S. 15A-1321 before December 1, 2003,~~G.S. 15A-1321, shall ~~have~~ provide a DNA sample ~~drawn~~ before parole or release from the penal system or before release from the mental health facility.

(b) Crimes covered by this Article include all of the following:

(1) All felonies.

~~(2) G.S. 14-32.1 Assaults on handicapped persons.~~

(3) ~~G.S. 14-277.3A or former~~Former G.S. 14-277.3 – Stalking.

~~(4) G.S. 14-27.5A Sexual battery.~~

(5) All offenses described in G.S. 15A-266.3A."

SECTION 6. G.S. 15A-266.5 reads as rewritten:

"**§ 15A-266.5. Tests to be performed on ~~blood sample.~~DNA sample.**

(a) The tests to be performed on each ~~blood~~ DNA sample are:

(1) To analyze and type only the genetic markers that are used for identification purposes contained in or derived from the DNA.

(2) For law enforcement identification purposes.

(3) For research and administrative purposes, including:

a. Development of a population database when personal identifying information is removed.

b. To support identification research and protocol development of forensic DNA analysis methods.

c. For quality control purposes.

d. To assist in the recovery or identification of human remains from mass disasters or for other humanitarian purposes, including identification of missing persons.

(b) The DNA record of identification characteristics resulting from the DNA testing shall be stored and maintained by the SBI in the State DNA Database. The DNA sample itself will be stored and maintained by the SBI in the State DNA Databank.

(c) The SBI shall report annually to the Joint Legislative Commission on Governmental Operations and to the Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee, on or before February 1, with information for the previous calendar year, which shall include: a summary of the operations and expenditures relating to the DNA Database and DNA Databank; the number of DNA records from arrestees entered; the number of DNA records from arrestees that have been expunged; and the number of DNA arrestee matches or hits that occurred with an unknown sample, and how many of those have led to an arrest and conviction; and how many letters notifying defendants that a record and sample have been expunged, along with the number of days it took to complete the expunction and notification process, from the date of the receipt of the verification form from the State."

SECTION 7. G.S. 15A-266.6 reads as rewritten:

"**§ 15A-266.6. Procedures for ~~withdrawal of blood sample for~~ obtaining DNA ~~analysis.~~sample for analysis; refusal to provide sample.**

(a) Each DNA sample ~~required to be drawn~~ provided pursuant to G.S. 15A-266.4 from persons who are incarcerated shall be ~~drawn~~ obtained at the place of incarceration. DNA samples from persons who are not sentenced to a term of confinement shall be ~~drawn~~ obtained immediately following sentencing. The sentencing court shall order any person not sentenced to a term of ~~confinement~~ confinement, who has not previously provided a DNA sample pursuant to any provision of law requiring a sample and whose DNA record and sample have not been expunged pursuant to law, to report immediately following sentencing to the location designated by the sheriff. If the sample cannot be taken immediately, the sheriff shall inform the court of the date, time, and location at which the sample shall be taken, and the court shall enter that date, time, and location into its order. A copy of the court order indicating the date, time, and location the person is to appear to have a sample taken shall be given to the sheriff. If a person not sentenced to a term of confinement fails to appear immediately following sentencing or at the date, time, and location designated in the court order, the sheriff shall inform the court of the failure to appear and the court may issue an order to show cause pursuant to G.S. 5A-15 and may issue an order for arrest pursuant to G.S. 5A-16. The defendant shall continue to be subject to the court's order to provide a DNA sample until such time as his or her DNA sample is analyzed and a record is successfully entered into the State DNA Database.

(b) If, for any reason, the defendant provides a DNA blood sample instead of a cheek swab, ~~Only~~ only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory technician, phlebotomist, or other health care worker with phlebotomy training shall draw ~~any~~ the DNA blood sample to be submitted for analysis. No civil liability shall attach to any person authorized to draw blood by this section as a result of drawing blood from any person if the blood was drawn according to recognized medical procedures. No person shall be relieved from liability for negligence in ~~the drawing of any~~ obtaining a DNA ~~sample.~~sample by any method.

(c) The SBI shall provide ~~to the sheriff the materials and supplies~~the materials, supplies, and postage pre-paid envelopes necessary to ~~draw~~ obtain a DNA sample from a person ~~not sentenced to a term of confinement.~~required to provide a DNA sample pursuant to this Article and to forward the DNA sample to the appropriate laboratory for DNA analysis and testing. Any DNA sample ~~drawn from a person not sentenced to a term of confinement~~obtained pursuant to this Article, other than a DNA sample obtained from a person who is incarcerated, shall be taken using the materials and supplies provided by the SBI.

(d) Duly authorized law enforcement and corrections personnel may employ reasonable force in cases where an individual refuses to provide a DNA sample required under this Article, and no such employee shall be civilly or criminally liable for the use of such reasonable force.

(e) Any person who is subject to the requirements of this Article, and who, after receiving notification of the requirement to provide a DNA sample, knowingly refuses to provide such DNA sample, shall be guilty of a Class A1 misdemeanor."

SECTION 8. G.S. 15A-266.7 reads as rewritten:

"**§ 15A-266.7. Procedures for conducting DNA analysis of ~~blood~~ DNA sample.**

~~The SBI shall adopt rules governing the procedures to be used in the submission, identification, analysis, and storage of DNA samples and typing results of DNA samples submitted under this Article. The DNA sample shall be securely stored in the State Databank. The typing results shall be securely stored in the State Database. These procedures shall also include quality assurance guidelines to insure that DNA identification records meet standards and audit standards for laboratories which submit DNA records to the State Database. Records of testing shall be retained on file at the SBI.~~

(a) The SBI shall:

(1) Adopt procedures to be used in the collection, security, submission, identification, analysis, and storage of DNA samples and typing results of DNA samples submitted under this Article. These procedures shall also include quality assurance guidelines to insure that DNA identification records meet audit standards for laboratories which submit DNA records to the State DNA Database.

(2) Adopt Quality Assurance Guidelines for DNA Testing Laboratories and DNA Databasing Laboratories that meet or exceed the quality assurance guidelines established for such laboratories by the CODIS unit of the Federal Bureau of Investigation.

(b) DNA samples shall be securely stored in the State DNA Databank. The typing results shall be securely stored in the State DNA Database.

(c) Records of testing shall be retained on file at the SBI."

SECTION 9. G.S. 15A-266.8 reads as rewritten:

"**§ 15A-266.8. DNA database exchange.**

(a) It shall be the duty of the SBI to receive DNA samples, to store, to analyze or to contract out the DNA typing analysis to a qualified DNA laboratory that meets the guidelines as established by the SBI, classify, and file the DNA record of identification characteristic profiles of DNA samples submitted pursuant to ~~G.S. 15A-266.7~~ this Article and to make such information available as provided in this section. The SBI may contract out DNA typing analysis to a qualified DNA laboratory that meets guidelines as established by the SBI. The results of the DNA profile of individuals in the State Database shall be made available to local, State, or federal law enforcement agencies, approved crime laboratories which serve these agencies, or the district attorney's office upon written or electronic request and in furtherance of an official investigation of a criminal offense. These records shall also be available upon receipt of a valid court order directing the SBI to release these results to appropriate parties not listed above, when the court order is signed by a superior court judge after a hearing. The SBI shall maintain a file of such court orders.

(b) The SBI shall adopt rules governing the methods of obtaining information from the State Database and CODIS and procedures for verification of the identity and authority of the requester.

(c) The SBI shall create a separate population database comprised of ~~blood~~ DNA samples obtained under this Article, after all personal identification is removed. Nothing shall prohibit the SBI from sharing or disseminating population databases with other law enforcement agencies, crime laboratories that serve them, or other third parties the SBI deems

necessary to assist the SBI with statistical analysis of the SBI's population databases. The population database may be made available to and searched by other agencies participating in the CODIS system."

SECTION 10. G.S. 15A-266.11 reads as rewritten:

"**§ 15A-266.11. Unauthorized uses of DNA Databank; penalties.**

(a) Any person ~~who, by virtue of employment, or official position,~~who has possession of, or access to, individually identifiable DNA information contained in the State DNA Database or Databank and who willfully discloses it in any manner to any person or agency not entitled to receive it is guilty of a ~~Class 1 misdemeanor in accordance with G.S. 14-3.~~Class H felony.

(b) Any person who, without authorization, willfully obtains individually identifiable DNA information from the State DNA Database or Databank is guilty of a ~~Class 1 misdemeanor in accordance with G.S. 14-3.~~Class H felony."

SECTION 11. G.S. 15A-266.12 reads as rewritten:

"**§ 15A-266.12. Confidentiality of records.**

(a) All DNA profiles and samples submitted to the SBI pursuant to this Article shall be treated as confidential and shall not be disclosed to or shared with any person or agency except as provided in G.S. 15A-266.8.

(b) Only DNA records and samples that directly relate to the identification of individuals shall be collected and stored. These records and samples shall solely be used as a part of the criminal justice system for the purpose of facilitating the personal identification of the perpetrator of a criminal offense; provided that in appropriate circumstances such records may be used to identify potential victims of mass disasters or missing persons.

(c) DNA records and DNA samples submitted to the SBI pursuant to this Article are not a public record as defined by G.S. 132-1.

(d) In the case of a criminal proceeding, requests to access a person's DNA record shall be in accordance with the rules for criminal discovery as defined in G.S. 15A-902. The SBI shall not be required to provide the State DNA Database for criminal discovery purposes.

(e) DNA records and DNA samples submitted to the SBI may only be released for the following authorized purposes:

(1) For law enforcement identification purposes, including the identification of human remains, to federal, State, or local criminal justice agencies.

(2) For criminal defense and appeal purposes, to a defendant who shall have access to samples and analyses performed in connection with the case in which such defendant is charged or was convicted.

(3) If personally identifiable information is removed to local, State, or federal law enforcement agencies for forensic validation studies, forensic protocol development or quality control purposes, and for establishment or maintenance of a population statistics database.

(f) In order to maintain the computer system security of the SBI DNA database program, the computer software and database structures used by the SBI to implement this Article are confidential."

SECTION 12. Article 23 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-502A. DNA sample upon arrest.**

A DNA sample shall be obtained from any person arrested for an offense designated under G.S. 15A-266.3A, in accordance with the provisions contained in Article 13 of Chapter 15A of the General Statutes."

SECTION 13. G.S. 7B-2201 reads as rewritten:

"**§ 7B-2201. Fingerprinting and DNA sample from juvenile transferred to superior court.**

(a) When jurisdiction over a juvenile is transferred to the superior court, the juvenile shall be fingerprinted and the juvenile's fingerprints shall be sent to the State Bureau of Investigation.

(b) When jurisdiction over a juvenile is transferred to the superior court, a DNA sample shall be taken from the juvenile if any of the offenses for which the juvenile is transferred are included in the provisions of G.S. 15A-266.3A."

SECTION 14. This act becomes effective January 1, 2011.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. ✓

H. B. No. _____ DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Soles

1 moves to amend the bill on page 1, line 18

2 ( ) WHICH CHANGES THE TITLE

3 by _____

4 deleting "agency of" and

5 _____

6 substituting "agency OR".

7 _____

8 _____

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10 _____

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12 _____

13 _____

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15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-84 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-83

Date _____,2010

Senator Blue

moves to amend the bill on page 3, lines 32-33
by inserting between those lines the following:

"(b2) At the time a DNA sample is taken pursuant to this section, the person obtaining the DNA sample shall record, on a form promulgated by the SBI, the date and time the sample was taken, the name of the person taking the DNA sample, the name of the person from whom the sample was taken, and the offense or offenses for which the person was arrested. This record shall be maintained in the case file and shall be available to the prosecuting district attorney for the purpose of completing the requirements of subsection (g) of this section."

And on page 4, line 7
By deleting "subsection (g):" and inserting "subsections (g) and (g1):"

And on page 4, lines 20-44
By rewriting those lines to read:

"(g) Within 30 days of the occurrence of one of the events in subdivision (1) of subsection (f) of this section, the prosecuting district attorney shall determine if a DNA sample was taken pursuant to this section, and if so, shall:

(1) Indicate the facts of the qualifying event on a verification form promulgated by the Administrative Office of the Courts.

(2) Include the last known address of the defendant, as reflected in the court files, on the verification form.

(3) Sign the verification form or, if the defendant was acquitted or the charges were dismissed by the court, obtain the signature of a judge.

(4) Transmit the verification form to the SBI.

(g1) Within 30 days of receipt of the verification form, the SBI shall:

(1) Determine whether the requirement of subdivision (2) of subsection (f) of this section has been met.

(2) If the requirement has been met, remove the defendant's DNA record and samples as required by subsection (f) of this section.

(3) Mail to the defendant, at the address specified in the verification form, a notice either:

a. Documenting expunction of the DNA record and destruction of the DNA sample, or

b. Notifying the defendant that the DNA record and sample do not qualify for expunction pursuant to subsection (f) of this section.

(g2) The defendant may file a motion with the court to review the determination that the DNA record or sample do not qualify for expunction under this section or the failure of either the prosecuting district attorney or the SBI to act within the prescribed time period."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-84 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-83

Date _____,2010

Senator Blue

moves to amend the bill on page 3, lines 32-33
by inserting between those lines the following:

"(b2) At the time a DNA sample is taken pursuant to this section, the person obtaining the DNA sample shall record, on a form promulgated by the SBI, the date and time the sample was taken, the name of the person taking the DNA sample, the name of the person from whom the sample was taken, and the offense or offenses for which the person was arrested. This record shall be maintained in the case file and shall be available to the prosecuting district attorney for the purpose of completing the requirements of subsection (g) of this section."

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(1) Indicate the facts of the qualifying event on a verification form promulgated by the Administrative Office of the Courts.

(2) Include the last known address of the defendant, as reflected in the court files, on the verification form.

(3) Sign the verification form or, if the defendant was acquitted or the charges were dismissed by the court, obtain the signature of a judge.

(4) Transmit the verification form to the SBI.

(g1) Within 30 days of receipt of the verification form, the SBI shall:

(1) Determine whether the requirement of subdivision (2) of subsection (f) of this section has been met.

(2) If the requirement has been met, remove the defendant's DNA record and samples as required by subsection (f) of this section.

(3) Mail to the defendant, at the address specified in the verification form, a notice either:

a. Documenting expunction of the DNA record and destruction of the DNA sample, or

b. Notifying the defendant that the DNA record and sample do not qualify for expunction pursuant to subsection (f) of this section.

(g2) The defendant may file a motion with the court to review the determination that the DNA record or sample do not qualify for expunction under this section or the failure of either the prosecuting district attorney or the SBI to act within the prescribed time period."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-82 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-83

Date _____,2010

Senator McKissick

moves to amend the bill on page 7, lines 1-6
by deleting those lines.

And on page 8, lines 48-49
By inserting between those lines the following:

"**SECTION 12.1.** G.S. 15A-534(a) reads as rewritten:

'(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

(1) Release the defendant on his written promise to appear.

(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.

(3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.

(4) 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.

(5) House arrest with electronic monitoring.

If condition (5) is imposed, the defendant must execute a secured appearance bond under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.'"

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

S1383-ASA-82 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 1383-CSSA-83 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
(Sen.) Blue

moves to amend the bill on page 4, line ~~15-16~~ 14-15

( ) WHICH CHANGES THE TITLE

by rewriting ~~that~~ those lines to read:

"d. No conviction has occurred, at least three years has passed since the date of arrest, and ~~(2)~~ no active prosecution is occurring."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

S. B. No. S1383-CSSA-83 Amendment No. _____
(to be filled in by Principal Clerk)

Rep.)
Sen.) Blue

moves to amend the bill on page 6, line 13-14,

by inserting between those lines the following:

(d) The Department of Justice, in consultation with the Administrative Office of the Courts and the Conference of District Attorneys, shall study and develop recommended a procedure to place responsibility on the State to expunge DNA samples and records taken pursuant to G.S. 15A-266.3A and shall ~~report~~ ~~thereon~~ make a ~~recommendation thereon and~~ report to the Joint Legislative Commission on Governmental Operations, ~~and~~ to the Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee, and the Courts Commission, on or before February 1, 2011.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-82 [v.1]

Comm. Sub. [YES]
Amends Title [NO]
S1383-CSSA-83

Date _____,2010

Senator McKissick

moves to amend the bill on page 7, lines 1-6
by deleting those lines.

And on page 8, lines 48-49
By inserting between those lines the following:

"**SECTION 12.1.** G.S. 15A-534(a) reads as rewritten:

'(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

(1) Release the defendant on his written promise to appear.

(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.

(3) Place the defendant in the custody of a designated person or organization agreeing to supervise him.

(4) 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.

(5) House arrest with electronic monitoring.

If condition (5) is imposed, the defendant must execute a secured appearance bond under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.'"

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1383

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

S1383-ASA-82 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. H748-CSST-99[v.9] DATE 7/6/10

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

COMMITTEE SUBSTITUTE _____

Rep.) Sen.) Clodfelter

moves to amend the bill on page 9, line 31

( ) WHICH CHANGES THE TITLE

by deleting "person" and inserting "entity"

and on page 9, line 38

by deleting "person" and inserting "entity".

SIGNED Daniel G. Clodfelter

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. 748 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page _____, line _____

( ) WHICH CHANGES THE TITLE

by ~~page 9, lines 38-41~~

page 9, line 38 delete "to authorizing"

page 9, lines 40-41 are deleted in toto

page 9, lines 42 insert the words "; provided however that the provisions of GS 163-278 (a)(7) and (8) shall not apply to radio or television advertising after the statutory citation.

page 9, line 43 delete subparagraph (e) in toto.

SIGNED Samuel G. Hodgkins

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

MINUTES

July 8, 2010
Around the Desk of Chairman Martin Nesbitt

The Senate Judicary I Committee met during the first recess of the July 8, 2010 daily session. Chairman Martin Nesbitt presided. In attendance with Chairman Nesbitt was Vice Chairman Dan Clodfelter, Vice Chairman R. C. Soles, Senator Debbie Clary, Senator Harry Brown, Senator Andrew Brock, Senator Floyd McKissick, Senator David Rouzer, Senator Josh Stein, Senator Jerry Tillman, Senator Charlie Albertson and Senator Richard Stevens.

Chairman Nesbitt called the meeting to order at 3:52 p.m.

Of discussion was House Bill 1403. A Proposed Committee Substitute was distributed to members and adopted for discussion by a motion from Senator Clodfelter. Senator Clodfelter then explained changes to the fourth edition of the Bill. Included in these changes are that "DNA" is defined as blood, cheek swabs or other biological samples with cells provided by the intended person. Changes also include definition clarifications.

With no discussion regarding the PCS, Senator Clodfelter moved for favorable report. The motion was approved unanimously and the meeting was adjourned at 4 p.m.

Senator Martin Nesbitt, Jr.
Chairman

Jessica Kozma Proctor
Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

MINUTES

July 8, 2010 3:52 p.m.
Around the Desk of Chairman Martin Nesbitt

The Senate Judicary I Committee met during the first recess of the July 8, 2010 daily session. Chairman Martin Nesbitt presided. In attendance with Chairman Nesbitt was Vice Chairman Dan Clodfelter, Vice Chairman R. C. Soles, Senator Debbie Clary, Senator Harry Brown, Senator Andrew Brock, Senator Floyd McKissick, Senator David Rouzer, Senator Josh Stein, Senator Jerry Tillman, Senator Charlie Albertson and Senator Richard Stevens.

Chairman Nesbitt called the meeting to order at 3:52 p.m.

Of discussion was House Bill 1403. A Proposed Committee Substitute was distributed to members and adopted for discussion by a motion from Senator Clodfelter. Senator Clodfelter then explained changes to the fourth edition of the Bill. Included in these changes are that "DNA" is defined as blood, cheek swabs or other biological samples with cells provided by the intended person. Changes also include definition clarifications.

With no discussion regarding the PCS, Senator Clodfelter moved for favorable report. The motion was approved unanimously and the meeting was adjourned at 4 p.m.

Senator Martin Nesbitt, Jr.
Chairman

Jessica Kozma Proctor
Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY
SENATE JUDICIARY I COMMITTEE

MINUTES

July 8, 2010 5:55 p.m.
Around the Desk of Chairman Martin Nesbitt

The Senate Judicary I Committee met during the second recess of the July 8, 2010 daily session. Chairman Martin Nesbitt presided. In attendance with Chairman Nesbitt was Vice Chairman Dan Clodfelter, Vice Chairman R. C. Soles, Vice Chairman Josh Stein, Vice Chairman Pete Brunstetter, Senator Harry Brown, Senator Jerry Tillman, Senator Malcolm Graham, Senator Ellie Kinnaird, Senator Richard Stevens, Senator David Rouzer, Senator Margaret Dickson, Senator Phil Berger, Senator Dan Blue and Senator Charlie Albertson.

Chairman Nesbitt called the meeting to order at 5:55 p.m.

Of discussion was House Bill 1403. Another Proposed Committee Substitute was distributed to members and adopted for discussion by a motion from Senator Clodfelter. Senator Clodfelter explained drafting changes to the Bill, noting that the particular draft of discussion would be the "last one" for members.

With no discussion regarding the PCS, Senator Blue moved for favorable report. The motion was approved unanimously and the meeting was adjourned at 6 p.m.

Representative Goodwin was called to handle the Bill on the House floor pending conference report.

Senator Martin Nesbitt, Jr.
Chairman

Jessica Kozma Proctor
Committee Clerk